INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes involved	3
Statement	3
The questions are substantial	8
Conclusion	18
Appendix A	1a
Appendix B	24a
Appendix C	25a

CITATIONS

Cases:

Abington School Dist. v. *Schempp*, 374 U.S. 203	10
Autenrieth v. *Cullen*, 418 F.2d 586, certiorari denied, 397 U.S. 1036	12
Bailey v. *George*, 259 U.S. 16	16
Bailey v. *Drexel Furniture Co.*, 259 U.S. 20	17
Board of Education v. *Allen*, 392 U.S. 236	10
Board of Education v. *Barnette*, 319 U.S. 624	10
Bob Jones University v. *Simon*, No. 72-1470, decided May 15, 1974	14, 15, 16, 17
Buck v. *United States*, 466 F.2d 481	14
Commissioner v. *"Americans United" Inc.*, No. 72-1371, decided May 15, 1974	15, 17

Cases—Continued

	Page
Dugan v. *Rank*, 372 U.S. 609	14
Eighth Street Baptist Church, Inc. v. *United States*, 431 F.2d 1193	7
Enochs v. *Williams Packing Co.*, 370 U.S. 1	14, 15
Flast v. *Cohen*, 392 U.S. 83	17
Fleming v. *Rhodes*, 331 U.S. 100	2
Follett v. *McCormick*, 321 U.S. 573	10
Gillette v. *United States*, 401 U.S. 437	11, 12
Jules Hairstylists of Md. v. *United States*, 268 F. Supp. 511, affirmed *per curiam*, 389 F.2d 389, certiorari denied, 391 U.S. 934	14
Kalish v. *United States*, 411 F.2d 606, certiorari denied, 396 U.S. 835	17
Kent v. *United States and Northern California Regional Office of the American Friends Service Committee*, C.A. 9, Nos. 72-1093, 72-1094, decided May 10, 1974	17
Larson v. *Domestic & Foreign Corp.*, 337 U.S. 683	14
Matya v. *United States*, 478 F.2d 330	14
Murdock v. *Pennsylvania*, 319 U.S. 105	10
Muste v. *Commissioner*, 35 T.C. 913	12
Pietsch v. *President of United States*, 434 F.2d 861	17
Sherbert v. *Verner*, 374 U.S. 398	9, 11, 13
State Railroad Tax Cases, 92 U.S. 575	14-15
United States v. *Christian Echoes Ministry*, 404 U.S. 561	2
United States v. *Sherwood*, 312 U.S. 584	14
Wisconsin v. *Yoder*, 406 U.S. 205	13

Constitution and statutes: Page

Constitution of the United States of America:

First Amendment 2, 9, 10, 11, 12
Sixteenth Amendment 11

Internal Revenue Code of 1954 (26 U.S.C.):

Sec. 3402 2, 3, 6, 7, 8, 11, 12, 13, 15
Sec. 6212 15
Sec. 6213 15
Sec. 6302 15
Sec. 6414 7
Sec. 7421(a) 2, 3, 7, 14, 16

28 U.S.C. 1346(a) 15

Miscellaneous:

Annual Report of the Commissioner of Internal Revenue (1973) 8
H. Rep. No. 268, 78th Cong., 1st Sess. 11
S. Rep. No. 221, 78th Cong., 1st Sess. 11
Treasury Regulations on Employment Tax, § 31.6302(c)-1 (26 C.F.R.) 15

In the Supreme Court of the United States

OCTOBER TERM, 1973

No.

UNITED STATES OF AMERICA, APPELLANT

v.

AMERICAN FRIENDS SERVICE COMMITTEE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

OPINION BELOW

The findings of fact and conclusions of law of the district court (Appendix A, *infra*, pp. 1a-23a) are reported at 368 F. Supp. 1176.

JURISDICTION

The findings of fact, conclusions of law, and order (Appendix B, *infra*, p. 24a) of the district court were entered on December 31, 1973. The notice of appeal to this Court (Appendix C, *infra*, p. 25a) was filed on January 30, 1974. By order dated March

21, 1974, Mr. Justice Brennan extended the time for docketing the appeal to May 30, 1974.

The district court held that Section 3402 of the Internal Revenue Code of 1954 is unconstitutional as applied to the facts of this case. The jurisdiction of this Court is conferred by 28 U.S.C. 1252, which authorizes a direct appeal to this Court from a final judgment of any court of the United States holding an Act of Congress unconstitutional in any civil action to which the United States is a party. Such an appeal lies where a federal statute is held unconstitutional as applied to particular circumstances. *Fleming* v. *Rhodes*, 331 U.S. 100, 102-103; *United States* v. *Christian Echoes Ministry*, 404 U.S. 561, 563.

QUESTIONS PRESENTED

1. Whether Section 3402 of the Code, requiring employers to deduct and withhold from wages federal income taxes, violates the First Amendment right of free exercise of religion of appellee's employees who on religious grounds, object to the withholding of 51.6 percent of their taxes, representing their estimate of the portion of the federal budget allocated to military expenditures.

2. Whether the Anti-Injunction Act, 26 U.S.C. 7421(a), barred the district court from restraining the United States from collecting federal income taxes by means of the withholding method prescribed by Section 3402 of the Internal Revenue Code.

STATUTES INVOLVED

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 3402. INCOME TAX COLLECTED AT SOURCE.

(a) [as amended by Sec. 101(a), Tax Adjustment Act of 1966, P.L. 89-368, 80 Stat. 38] *Requirement of Withholding.*—Every employer making payment of wages shall deduct and withhold upon such wages (except as otherwise provided in this section) a tax determined in accordance with the following tables. For purposes of applying such tables, the term "the amount of wages" means the amount by which the wages exceed the number of withholding exemptions claimed, multiplied by the amount of one such exemption as shown in the table in subsection (b)(1):

* * * * *

SEC. 7421. PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) [as amended by Sec. 110(c), Federal Tax Lien Act of 1966, P.L. 89-719, 80 Stat. 1125] *Tax.*—Except as provided in sections 6212 (a) and (c), 6213(a), and 7426(a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

* * * * *

STATEMENT

Appellee American Friends Service Committee ("Committee") is a corporation organized in 1917 to

provide employment for conscientious objectors. Since its founding, it has expanded its operations into other religious, charitable, social, philanthropic and relief work in the United States and in various foreign countries. It employs a paid staff of approximately 450 to 500 persons, many of whom are members of the Religious Society of Friends, or Quakers, and are conscientiously opposed to participation in war in any form (Appendix A, *infra*, pp. 1a-2a).

Appellees Lorraine Cleveland and Leonard Cadwallader are both members of the Religious Society of Friends. Cleveland has been a pacifist since 1930 and has been employed by the Committee since 1944. As part of her religious beliefs, Cleveland is conscientiously opposed to participation in war in any form and objects to the voluntary payment of taxes which are used for military purposes. Cadwallader was employed by the Committee as Director of Youth Programs during 1969-1971. Prior to that time, he was recognized by the Selective Service System as a conscientious objector and was permitted to perform alternative civilian service in lieu of induction into the military. Like Cleveland, during the years in issue, he objected to the voluntary payment of taxes used for military purposes (Appendix A, *infra*, pp. 2a-3a).[1]

---

[1] Despite his objection during his employment with the Committee to the voluntary payment of taxes to be used for military expenditures, Cadwallader testified at trial that after leaving the Committee, he did not object to the withholding of taxes from his salary by a subsequent employer.

During the latter part of the 1960's, some of the Committee's employees and contributors became concerned that the Committee's withholding of federal income taxes from the wages of its employees prevented, as they saw it, the free expression of religious beliefs by those employees who opposed the voluntary payment of the portion of their taxes which was to be used for military purposes. Several employees threatened to resign over this or related issues, and at least one employee did resign.[2] However, he was easily replaced from among a large number of applicants for employment. Cadwallader resigned from the Committee in 1971, but his reasons for leaving were wholly unrelated to his belief that the withholding of income taxes from his wages was suppressing the free expression of his religious convictions. Cleveland is still employed by the Committee, and has disavowed any intention to resign even if the Committee is required to withhold taxes from her wages (Appendix A, *infra*, pp. 4a-5a).

Moreover, he has no objection to filing estimated tax returns for income earned since he became self-employed (Tr. 294-295, 298-299). "Tr." references are to the transcript of proceedings in the district court, a copy of which we have lodged with the Clerk of this Court.

[2] The employee who resigned testified that the final event which precipitated his resignation was the Committee's decision to honor an Internal Revenue Service levy on his salary for unpaid federal telephone excise taxes. He indicated that he "perhaps" would have reconsidered his decision to resign if the Committee had not been obligated to withhold taxes on his salary (Tr. 309-310).

In 1969, five of the Committee's employees, including Cleveland and Cadwallader, requested that it discontinue withholding from their salaries a certain percentage of federal income taxes that it was otherwise obligated to collect under Section 3402 of the Internal Revenue Code. The Committee honored these requests and ceased withholding a portion of the taxes during the final quarter of 1969. In ascertaining the portion of the total taxes that was not to be withheld, the five employees and the Committee relied upon a statement made in a publication of the Friends Committee on National Legislation that approximately 51.6 percent of the federal tax revenues was spent for military purposes during 1968. In accordance with the employees' request, the Committee did not withhold $574.09 from their wages for the final quarter of 1969 (Appendix A, *infra*, pp. 5a-6a).

Although the Committee refrained from withholding the $574.09, it nevertheless remitted that amount to the Internal Revenue Service on February 10, 1970. Two days later, the Committee filed a claim for refund of the amount paid over, on the basis of the religious and conscientious position of itself and its employees. The Regional Director of the Service denied the claimed refund claim (Appendix A, *infra*, p. 6a).

Appellees thereupon initiated the present action for injunctive relief in the United States District Court for the Eastern District of Pennsylvania, challenging the constitutionality of Section 3402 of the Code. The district court denied the government's motion

to dismiss the complaint for lack of jurisdiction under the Anti-Injunction Act; that Act prohibits suits "for the purpose of restraining the assessement or collection of any tax." It went on to hold that Section 3402 is unconstitutional as applied in this case because it operates as an abridgment to the free exercise of the religion of appellees Cleveland and Cadwallader (Appendix A, *infra*, pp. 9a-23a). The court thereupon enjoined the United States from requiring the withholding of 51.6 percent of the income taxes of Cleveland and Cadwallader required by Section 3402 to be withheld from their wages. The court also ordered the Committee to cease withholding a similar percentage of the taxes of these two employees (Appendix B, *infra*, p. 24a).[2]

---

[2] The district court further entered judgment in favor of the Committee against the United States for $574.09 (Appendix B, *infra*, p. 24a). We do not appeal from that aspect of the decision. Although the Committee did not allege in either its claim for refund or pleadings in the district court that all federal income taxes due from its five employees had been collected by the Internal Revenue Service through summary collection proceedings, the district court found as a fact that all taxes had been paid by the employees, and that the government had twice collected the amount of taxes to which it was entitled (Appendix A, *infra*, pp. 6a-7a). We are advised by the Internal Revenue Service that it has collected by levy the income taxes for the year 1969 due from the five employees and not withheld by the Committee. Accordingly, even though the $574.09 paid by the Committee from its own funds was not an "overpayment" when paid within the meaning of Section 6414 of the Code, we do not challenge the district court's determination that a refund of $574.09 was payable to the Committee. Cf. *Eighth Street Baptist Church, Inc.* v. *United States*, 431 F.2d 1193 (C.A. 10).

THE QUESTIONS ARE SUBSTANTIAL

1. In holding that Section 3402 of the Internal Revenue Code is unconstitutional as applied to the facts of this case, the decision below seriously threatens the government's ability promptly and efficiently to collect revenues which appellees concede to be lawfully due. By enjoining the use of the withholding method with respect to a portion of the tax liability of appellees, the district court has erroneously nullified an Act of Congress designed to insure the current payment of income taxes upon wages. The importance of this method of collection is shown by the fact that withholding taxes on wages recently accounted for 78.4 percent of the total amount of individual income tax collections.[4] Since the decision below calls into question this vital method of tax collection from wages to the extent that the wage earner objects, as a matter of conscience, to particular government expenditures, it will doubtless have a significant impact upon the revenue. It will also undoubtedly engender a substantial volume of litigation. Plenary review by this Court is therefore necessary in order to resolve this constitutional challenge to the withholding tax system established by Congress.

The district court's decision that Section 3402 is unconstitutional as applied to the facts of this case is erroneous. In the court's view, "the withholding method of collection of taxes does foreclose [appel-

---

[4] *Annual Report of the Commissioner of Internal Revenue*, p. 27 (1973).

lees'] ability to freely exercise that part of their beliefs requiring them to refuse to participate in war in any form with respect to the payment of war taxes" (Appendix A, *infra*, p. 17a). Such a conclusion, we submit, cannot be squared with this Court's decisions construing the Free Exercise Clause of the First Amendment. Appellees' religious beliefs cannot insulate them from the withholding of income taxes from their wages.

In *Sherbert* v. *Verner*, 374 U.S. 398, 402-403, this Court described the parameters of the Free Exercise Clause as follows:

> The door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious *beliefs* as such, *Cantwell* v. *Connecticut*, 310 U.S. 296, 303. Government may neither compel affirmation of a repugnant belief, *Torcaso* v. *Watkins*, 367 U.S. 488; nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities, *Fowler* v. *Rhode Island*, 345 U.S. 67; nor employ the taxing power to inhibit the dissemination of particular religious views, *Murdock* v. *Pennsylvania*, 319 U.S. 105; *Follett* v. *McCormick*, 321 U.S. 573; cf. *Grosjean* v. *American Press Co.*, 297 U.S. 233. On the other hand, the Court has rejected challenges under the Free Exercise Clause to governmental regulation of certain overt acts prompted by religious beliefs or principles, for "even when the action is in accord with one's religious convictions, [it] is not totally free from legislative restrictions." *Braunfeld* v. *Brown*, 366 U.S. 599,

603. The conduct or actions so regulated have invariably posed some substantial threat to public safety, peace or order. See, *e.g.*, *Reynolds* v. *United States*, 98 U.S. 145; *Jacobson* v. *Massachusetts*, 197 U.S. 11; *Prince* v. *Massachusetts*, 321 U.S. 158; *Cleveland* v. *United States*, 329 U.S. 14.

Although the above enumeration of the restraints upon government action may not be exhaustive, it demonstrates the limits of the Free Exercise Clause. That clause prevents inhibition of activities because of belief, and precludes attempts to compel affirmation of a repugnant belief. Thus, "it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion." *Abington School Dist.* v. *Schempp*, 374 U.S. 203, 223. See also *Board of Education* v. *Allen*, 392 U.S. 236, 242-243. And in this connection, the Court has observed that a generally imposed income tax cannot rationally have a coercive effect on religious practices or beliefs. *Follett* v. *McCormick*, 321 U.S. 573, 577-578; *Murdock* v. *Pennsylvania*, 319 U.S. 105, 112.

Contrary to the conclusion of the district court, the application of the withholding tax to appellees' wages is in no way concerned with their "religious beliefs as such." Nor does it deny to them the right to continue to hold and promote any of their beliefs. Compare *Board of Education* v. *Barnette*, 319 U.S. 624. Rather, the process of current collection of taxes by means of the withholding method prescribed by

Section 3402 is entirely neutral and unrelated to religion. That provision requires every employer making payment of wages to deduct and withhold a tax on those wages. The system for the current payment of individual income taxes now provided in Section 3402 was originally enacted in 1943 to remedy inequities caused by increased federal income tax rates. The legislative history indicates that the purpose of the measure was to alleviate the hardship placed upon the wage earner in meeting his taxes and to assist the government in securing needed revenues. H. Rep. No. 268, 78th Cong., 1st Sess., pp. 1-2; S. Rep. No. 221, 78th Cong., 1st Sess., p. 1.

As a collection mechanism for the income tax, there is no question that Section 3402 was enacted pursuant to the authority granted to Congress by the Sixteenth Amendment. The withholding tax system operates to advance the government's valid secular goals and does not interfere with any religious ritual or practice or work a penalty against any theological position. Cf. *Gillette* v. *United States*, 401 U.S. 437, 461-462. To be sure, the Court reaffirmed in *Sherbert* v. *Verner*, *supra*, 374 U.S. at 406, that the sensitivity of the Free Exercise Clause requires that " '[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation.' " But the competing interests here are paramount since the interference with the collection of income taxes countenanced by the district court could dangerously impair or even destroy the ability of the government to function.

If the Internal Revenue Service were compelled to collect taxes by levy from every person who objected to tax collection by withholding because of disapproval on religious grounds of particular governmental expenditures, the revenue collection resources of the Service would be severely strained.[5] Cf. *Autenrieth* v. *Cullen*, 418 F.2d 586, 588 (C.A. 9), certiorari denied, 397 U.S. 1036; *Muste* v. *Commissioner*, 35 T.C. 913. The Free Exercise Clause has never been construed to interfere with such a fundamental societal activity as the collection of taxes. As this Court observed in *Gillette* v. *United States*, *supra*, 401 U.S. at 461, in terms most appropriate to appellees' claim, "[o]ur cases do not at their farthest reach support the proposition that a stance of conscientious opposition relieves an objector from any

---

[5] Cleveland's and Cadwallader's objection to the withholding of taxes as an interference with protected religious rights is in stark contrast with their concession that the taxes may be collected by levies on their assets. Their objection to one means of collection and acceptance of the other apparently springs from their erroneous belief that the former method is a voluntary exaction of taxes, while the latter is involuntary. But Section 3402 requires every employer under force of law to deduct and withhold taxes on its employees' wages. Nothing in the statute can be interpreted as creating a voluntary collection system that can be accepted or rejected at will. In attempting to establish their right to force the government to proceed by levy, they seek an occasion for a direct confrontation with the government upon which they may make explicit their refusal to pay voluntarily that part of their taxes which they assert will be devoted to military uses.

colliding duty fixed by a democratic government."[6] Surely the obligation to pay concededly valid income taxes pursuant to the prescribed method of collection imposes a duty.

2. Apart from its erroneous holding that Section 3402 of the Code is unconstitutional as applied to the facts of this case, the district court mistakenly concluded that it had jurisdiction to consider appellees' claim for injunctive relief. In addition to the fact that the United States has not consented to this

---

[6] The district court's reliance (Appendix A, *infra*, pp. 14a, 17a, 19a-20a) upon *Sherbert* v. *Verner*, *supra*, and *Wisconsin* v. *Yoder*, 406 U.S. 205, is misplaced. In both of those cases, the state interest in regulating the activity at issue was far less compelling than the need to raise revenues necessary for the very survival of the governmental structure. In *Snerbert*, the Court held that disqualification of a Seventh-Day Adventist from unemployment compensation solely because of her refusal to accept employment in which she would have to work on Saturday violated the Free Exercise Clause. The Court rejected the claimed state interest that false religious objections would dilute the unemployment compensation fund and necessary Saturday work would be hindered on the ground that "there [was] no proof whatever to warrant such fears of malingering or deceit * * *" (374 U.S. at 407).

Similarly, in *Wisconsin* v. *Yoder*, *supra*, the Court sustained the claims of the Amish that enforcement of a state compulsory formal education requirement after the eighth grade would violate the free exercise of their religion. The interest of the state in requiring an additional one or two years of formal high school attendance was deemed insufficient as against the claim that such additional schooling "would gravely endanger if not destroy the free exercise of [the Amish] religious beliefs" (406 U.S. at 219).

suit for an injunction against it,[7] this action is specifically barred by the federal Anti-Injunction Act, 26 U.S.C. 7421(a). With exceptions not here relevant, that statute, which this Court recently observed in *Bob Jones University* v. *Simon*, No. 72-1470, decided May 15, 1974 (slip op. 10-11) "could scarcely be more explicit," provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." As the Court explained in *Bob Jones University* v. *Simon*, *supra* (slip op. at 11), "the principal purpose of this language * * * [is] the protection of the Government's need to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement judicial interference * * *." See also *Enochs* v. *Williams Packing Co.*, 370 U.S. 1, 7;[8] *State Railroad Tax*

---

[7] The doctrine of sovereign immunity provides a jurisdictional bar to appellees' suit. See *United States* v. *Sherwood*, 312 U.S. 584, 586. Whether or not appellees could seek relief against an individual officer of the United States (see *Larson* v. *Domestic & Foreign Corp.*, 337 U.S. 683, 690; *Dugan* v. *Rank*, 372 U.S. 609, 621-622), the action against the United States should have been dismissed as an unconsented suit. *Jules Hairstylists of Md.* v. *United States*, 268 F. Supp. 511, 513-514 (D. Md.), affirmed *per curiam*, 389 F.2d 389 (C.A. 4), certiorari denied, 391 U.S. 934; *Matya* v. *United States*, 478 F.2d 330 (C.A. 8); *Buck* v. *United States*, 466 F.2d 481 (C.A. 10).

[8] In *Enochs* v. *Williams Packing Co.*, 370 U.S. 1, the Court created a narrow exception to the otherwise broad restriction against injunctive relief in federal tax cases. There, the Court unanimously held that a taxpayer seeking an injunc-

Cases, 92 U.S. 575, 613-614. Thus, the Act protects the collection of the revenue by limiting all judicial review of tax collection activities to the two methods authorized by Congress, refund suits (28 U.S.C. 1346 (a)(1)) or deficiency proceedings in the Tax Court (Sections 6212 and 6213 of the Code).

Section 3402(a) requires every employer making payment of wages to "deduct and withhold upon such wages * * * a tax" determined under appropriate tables. Once withheld, the taxes must be deposited by the employer in a government depositary within a specified period of time. See Section 6302 of the Code; Treasury Regulations, § 31.6302(c)-1. Since the withholding system is a method for the collection of income taxes upon wages, the order of the district court enjoining the United States from collecting 51.6 percent of the federal income taxes of Cleveland and Cadwallader by use of the withholding method was an injunction against "the * * * collection of any

---

tion against the collection of taxes must satisfy a two-fold test. First, he had to demonstrate that under no circumstances could the government prevail on the merits of its claim. Secondly, he must show that collection of the tax will result in an irreparable injury for which there is no adequate legal remedy. In *Bob Jones University* v. *Simon*, *supra*, the Court reaffirmed *Williams Packing* as the "capstone to judicial construction of the [Anti-Injunction] Act" (slip op. at 16). See also *Commissioner* v. *"Americans United" Inc.*, No. 72-1371, decided May 15, 1974 (slip op. 5). Since, as the district court noted (Appendix A, *infra*, p. 12a), appellees Cleveland and Cadwallader do not challenge the government's right to collect the full taxes due on their income, they cannot meet the two-part test of *Williams Packing*.

tax," which is flatly prohibited by the Anti-Injunction Act.

Indeed, the district court acknowledged as much in its characterization of this suit as an objection "to one of several means of collection of a certain portion of [appellees'] federal income taxes" (Appendix A, *infra*, p. 12a). It concluded, however, that the statutory bar against injunctions did not apply because appellees "are not contesting the validity of the tax itself or the use to which the tax is put, and they are not seeking a refund of any tax alleged to be due to them" (*ibid.*). But such considerations are irrelevant in determining the applicability of the Anti-Injunction Act, the terms of which have been accorded "literal force" by this Court's decisions. See *Bob Jones University* v. *Simon*, *supra* (slip op. at 16-20). Nothing in either the language of the Anti-Injunction Act or in this Court's decisions suggests that this suit is beyond the reach of the statute simply because the validity of the tax itself is not being challenged. The fact that appellees' challenge is constitutional does not justify an exception to the bar of the Anti-Injunction Act. More than 50 years ago in *Bailey* v. *George*, 259 U.S. 16, the Court refused to enjoin the collection of a child labor tax as a regulatory measure beyond the taxing power of Congress.

Significantly, the Court rejected the taxpayer's claim for equitable relief on the same day that it struck down the tax as unconstitutional in a tax refund suit. *Bailey* v. *Drexel Furniture Co.*, 259 U.S. 20. See *Bob Jones University* v. *Simon*, *supra* (slip op. at 14-15); *Commissioner* v. *"Americans United" Inc.*, *supra* (slip op. at 7). The district court accordingly had no jurisdiction to entertain appellees' claim for injunctive relief against the application of the withholding tax collection system.[9]

[9] Indeed, to the extent that appellees' challenge may be deemed to be directed against the validity of the governmental expenditures for military activities, they are without the requisite standing to sue. They have not shown, much less alleged, that such expenditures exceed "specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power * * *." Cf. *Flast* v. *Cohen*, 392 U.S. 83, 102-103. See also *Pietsch* v. *President of United States*, 434 F.2d 861, 863 (C.A. 2); *Kalish* v. *United States*, 411 F.2d 606, 607 (C.A. 9), certiorari denied, 396 U.S. 835; *Kent* v. *United States and the Northern California Regional Office of the American Friends Service Committee*, C.A. 9, Nos. 72-1093, 72-1094, decided May 10, 1974.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

SCOTT P. CRAMPTON,
Assistant Attorney General.

STUART A. SMITH,
Assistant to the Solicitor General.

ERNEST J. BROWN,
WESLEY J. FILER,
Attorneys.

MAY 1974.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

Civil Action No. 70-1405

AMERICAN FRIENDS SERVICE COMMITTEE, LORRAINE CLEVELAND and LEONARD CADWALLADER, PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, DEFENDANT

FINDINGS OF FACT

NEWCOMER, J. December 31, 1973

Pursuant to Federal Rule of Civil Procedure 52 (a) the Court makes the following Findings of Fact and Conclusions of Law.

1. The American Friends Service Committee (hereinafter AFSC), is a religious corporation which was founded in 1917, with the original purpose of performing war relief work in World War I; it was intended to provide employment for conscientious objectors to war who were to perform alternative civilian service. Throughout its history since that time, although its operations are much expanded, the AFSC has continued to work in the same vein, engaging in religious, charitable, social, philanthropic and relief work throughout the United States and in foreign countries. The corporation is governed by a board of directors consisting of forty members of the Religious

Society of Friends, or Quakers, and it employs a paid staff of 450 to 500 persons, as well as several thousand volunteer workers. Because of the nature and goals of AFSC, a large proportion of its employees—approximately a third—are members of the Religious Society of Friends; a large proportion, by reason of religious training and belief, are conscientiously opposed to participation in war in any form; and among the male employees, many have been recognized by the Selective Service System as conscientious objectors. Because of its nature and goals, and because of the character of the men and women who are drawn to work for it, the AFSC as a body is almost unique in its corporate concern with matters of war and peace and with matters affecting the consciences of its employees.

2. Plaintiff Lorraine Cleveland is an employee of the AFSC, and with occasional interruptions, has worked for the AFSC continuously since October 1944; she has held a wide variety of positions, and presently is Director of the Africa and Middle East Programs in the AFSC's International Service Division. She has been a member of the Religious Society of Friends since 1947. Her late husband, who also spent much of his working life as an employee of Quaker organizations, was a duly recognized conscientious objector during World War II, who performed authorized civilian alternative service in a civilian public service camp. Mrs. Cleveland has been a pacifist since 1930, and because of her deeply held religious beliefs, she is conscientiously opposed to par-

ticipation in war in any form. As a part of this religious and conscientious objection to war, it is contrary to her religious principles to contribute to the waging of war through the voluntary payment of taxes which are put to that purpose.

3. The individual plaintiff Leonard Cadwallader began employment with the AFSC in the autumn of 1969, and held a position as the Director of Youth Programs until he resigned from the Service Committee in the autumn of 1971. He is a "birthright" Quaker, having been born in a Quaker family, and having been a member of the Religious Society of Friends throughout his life. Mr. Cadwallader has been conscientiously opposed to participation in war in any form throughout his life; he was recognized as a conscientious objector by the Selective Service System, and was permitted to perform alternative civilian service in lieu of induction into the military. In 1969, Mr. Cadwallader, like Mrs. Cleveland, had come to the conclusion that his religious opposition to war extended to a conscientious duty not to pay voluntarily those taxes which were used to finance war and military activities.

4. Dr. Edwin Bronner is an expert on the history of Quakerism in the United States.

5. Dr. Bronner's deposition testimony establishes that, although there is no formal creed or dogma in Quakerism, it has been true throughout the history of the Religious Society of Friends, since its beginnings in the seventeenth century, that most Quakers have considered it an integral part of their faith to

bear witness to the beliefs which they hold. It has always been the prevailing view that simple preaching of one's beliefs is not sufficient, and that one's actions must accord with and give expression to one's beliefs. Many of the employees of the AFSC, including particularly the individual plaintiffs Cleveland and Cadwallader, share in this belief, and for these employees, the operation of the withholding tax, which leaves them no option as to the payment of the taxes which they conscientiously question, operates as a direct abridgment of the expression and implementation of deeply cherished religious beliefs.

6. During the decade of the 1960's, and especially in the latter part of that period, the AFSC began to face increasing difficulty as a result of its acts as an employer, in performing its statutory duty of withholding federal income taxes from the salaries of its employees. As ever larger numbers of its employees came to believe that they could not, in good conscience, voluntarily pay taxes in support of war, both employees and contributors became more concerned with the AFSC's continued withholding of employee taxes, and the consequent frustration of the employees' expression of their religious beliefs. Many employees, including the individual plaintiffs in this action, questioned whether they could continue their employment with AFSC if it did not cease withholding their taxes. Several employees directly threatened to resign over this or related issues, and at least one employee, Thomas Flower, actually did resign over war tax issues.

7. One of the 300 or so regular employees of AFSC was shown to have resigned in protest over what he considered to be AFSC's failure to take more vigorous action to stop withholding taxes alleged to be used for military purposes. However, that employee was replaced from among a large number of applicants for employment.

8. The plaintiff, Leonard Cadwallader, has resigned from AFSC for reasons unrelated to the withholding tax issue and plaintiff, Lorraine Cleveland, disavows any intention to resign even if AFSC is required to withhold the taxes to which she objects.

9. By letter to Bronson Clark, the Executive Secretary of AFSC, the individual plaintiffs Cleveland and Cadwallader, on December 16 and December 15, 1969, respectively, formally requested that the AFSC discontinue withholding from their salaries the proportions of their federal taxes which were allocated for military and war purposes. Mrs. Cleveland, relying upon the December 1968 issue of the "Washington Newsletter" of the Friends Committee on National Legislation (hereinafter "FCNL"), specifically requested that 51.6% of her taxes not be withheld; Mr. Cadwallader mentioned no specific figure, but understood that if the AFSC honored his request, it would use the FCNL figure. The AFSC honored these requests, as well as similar requests from other, similarly situated employees, and ceased withholding from those employees 51.6% of the federal taxes which itwas otherwise obligated ot withhold.

10. Although the amounts in question were not withheld from the respective employees' salaries, the

AFSC nevertheless paid equivalent amounts from its own treasury over to the Internal Revenue Service, in an effort to have the maximum compliance possible with the law, consistent with the demands of conscience, and in order to avoid the invocation of criminal penalties against its officers. It was stipuated before trial that a payment of $574.09 was remitted on February 10, 1970, representing such payments for five employees, including the individual plaintiffs, for the final quarter of 1969. It was also stipulated that on February 12, 1970, the AFSC submitted to the Internal Revenue Service a claim for refund for the amount in question, explaining the religious and conscientious position of itself and its employees. On March 5, 1970, a letter was directed to the AFSC by Earl L. Torgerson, Director of the Internal Revenue Service, Mid-Atlantic Region, denying the claimed refund. The AFSC therefore was compelled to make a double payment of the amounts in question, first to its employees, and then to the Internal Revenue Service.

11. Both individual plaintiffs, Mrs. Cleveland and Mr. Cadwallader, filed on or before April 15, 1971, the statutory deadline, individual income tax returns for the tax year 1970, showing in full the wages which they had earned, and the amounts which had not been withheld by their employer. Both enclosed letters in which they stated their refusal to pay voluntarily the tax involved, and informed the Internal Revenue Service of their religious and conscientious reasons for such refusal.

12. The Internal Revenue Service, by means of levies against the assets of both individual plaintiffs, subsequently collected the full amount of taxes due and owing from each of them, and collected as well interest at the rate of 6% per year, and a penalty at the rate of ½ of 1% per month.

13. The AFSC has continued not to withhold the disputed amount of tax on the wages of the two individual plaintiffs, continuing to the date of trial in the case of Lorraine Cleveland, and to the time of his resignation for Leonard Cadwallader. In all cases, both individual plaintiffs have reported on their tax returns all wages earned, and all taxes due and not withheld, and in all such cases, the Internal Revenue Service has collected the amount of taxes not paid voluntarily, together with 6% annual interest and a penalty at the rate of ½ of 1% per month.

14. The failure of the AFSC to withhold the taxes in question from the wages of the individual plaintiffs, and the consequent use by the government of levies to collect these taxes, has caused some additional difficulty or expense in collection. The issuance and service of a notice of levy is a regular and routine operation for the Internal Revenue Service, and both the AFSC and the banks to which the Internal Revenue Service has looked for collection have honored the levies which have been served on them.

15. The 6% annual interest rate and the ½ of 1% per month penalty are calculated at a rate to place the taxpayer in the same position as those who voluntarily pay their taxes at the required times and

to reimburse the government for any collection costs which it might incur in resorting to the levy process.

16. However, the above 6% interest rate and penalty set forth in finding No. 15 above would not reimburse the government for collection costs which would result from use of the levy process in cases where small amounts of money are due the Internal Revenue Service.

17. The AFSC's cessation of withholding of the proportion of taxes involved has substantially eased the burden on the consciences of the employees thereby affected; it has permitted them to face their government directly over the issue of whether they will pay voluntarily those of their taxes which are put to military and war purposes, and thereby permitted them to bear witness to their beliefs as their most deeply held religious convictions require them to do.

18. The cessation of withholding by the AFSC has likewise substantially relieved the earlier pressures on AFSC from its other employees and contributors, who were concerned with AFSC's role in the involuntary collection of war taxes from its employees; it has likewise reduced the burden of conscience borne by the AFSC itself as an organization in interfering with the expression of the religious and conscientious beliefs of its employees.

19. The figure of 51.6% as the proportion of the federal budget expended for military and war purposes is based on a computation by the Friends Committee on National Legislation of actual appropriations made by the Congress in the calendar year

1968. The computation and analysis is set forth in detail, with accompanying tables and charts, in the December, 1968, issue of the FCNL "Washington Newsletter." Miss Frances Neely, legislative secretary of FCNL, testified on the research and statistical analysis which is annually performed by FCNL researchers, and which was performed for the calendar year 1968, in arriving at the figures reported in the Newsletter. The figure represents a reasonable, rational and fair percentage amount which can be used to determine the proportion of the individual plaintiffs' taxes which are spent for purposes to which they conscientiously object.

20. The government has an interest in maintaining a uniform, efficient and orderly method of collecting federal income taxes.

21. The Collection of such taxes by means of the withholding method is the most efficient means of collection devised by the government to accomplish the objectives set forth in finding No. 20 above.

DISCUSSION

This case is one of first impression and presents us with several difficult questions under the First Amendment of the United States Constitution dealing with the free exercise of religion.

Jurisdiction over the subject matter does exist pursuant to 28 U.S.C. § 1331(a) with respect to the individual plaintiffs Lorraine Cleveland and Leonard Cadwallader, and 28 U.S.C. § 1346(a)(1) gives us subject matter jurisdiction over the refund claim

of the AFSC. The complaint alleges that with respect to the two individual named plaintiffs, the amount involved in this particular controversy exceeds the sum of $10,000 exclusive of interest and costs.

Plaintiffs Cleveland and Cadwallader each have standing to attack the withholding method of collecting their taxes because such method of collection directly forecloses their ability to freely express their opposition to the participation in war in any form, which opposition is a vital and fundamental part of their religious practice as Quakers. Section 7421(a)[1] of the Internal Revenue Code of 1954 does not bar the suit by plaintiffs Cleveland and Cadawallader because they do not seek to restrain "the assessment or collection of any tax" but rather are contesting only the method of collection utilized by the Internal Revenue Service as it applies to the admittedly unique facts of this case. The government argues that plaintiffs Cleveland and Cadwallader are indeed attempting to enjoin the collection of a portion of their federal income taxes by means of employer withholding

---

[1] Section 7421 [as amended by Section 110(c), Federal Tax Lien Act of 1966, P.L. 89-719, 80 Stat. 1125] PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) *Tax*—Except as provided in sections 6212(a) . . . , no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

and that the attack by plaintiffs on the method of collection only, rather than on the collection of the tax itself, is simply a distinction without a difference.

The government relies on Enochs v. Williams Packing Co., 370 U.S. 1 (1962) for the proposition that § 7421(a) bars a suit in this case. However, a close reading of Enochs discloses that § 7421(a) was not intended to foreclose the kind of constitutional inquiry which presently confronts this Court.

> "The manifest purpose of 7421(a) is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund." 370 U.S. at 7.

Applying this language to plaintiffs Cleveland and Cadwallader, it seems clear to us that their claim against the government in this case cannot be characterized as a suit for refund of their federal income taxes. They have not alleged that the government owes them any money and with respect to their individual claim, there is no disputed sum in existence for which a refund action would lie at the present time. The government has in fact collected all amounts of tax with interest and penalty which are due it so that we would have no power to enjoin the collection of taxes presently in dispute because none are in existence.

The clear meaning of § 7421(a) and *Enochs*, we believe, is that this Court does not have the power to enjoin the collection of taxes as long as the taxpayer has the right to sue for a refund. Here plain-

tiffs Cleveland and Cadwallader are objecting to one of several means of collection of a certain portion of their federal income taxes. They are not contesting the validity of the tax itself or the use to which the tax is put, and they are not seeking a refund of any tax alleged to be due to them.

The constitutionality *vel non* of the tax itself and the uses to which the tax monies are put are irrelevant to the question involved herein. Plaintiffs Cleveland and Cadwallader ask this Court to consider a less restrictive alternative to the withholding method of collecting a portion of their taxes so that they will be able to refuse to pay that portion of their taxes which are used for war purposes and thus fulfill the requirement of their faith that they bear witness to their peace testimony by refusing to participate in war in any form. We believe we have the power to entertain such a suit and to grant appropriate relief, if necessary.

The AFSC, however, is on a different footing. The AFSC as plaintiff employer herein is suing for a refund of taxes paid by it pursuant to 26 U.S.C. § 3403. Jurisdiction for such refund is posited on 28 U.S.C. § 1346(a)(1).

The government argues that the AFSC is not a taxpayer and therefore cannot maintain this suit for refund. It is true that only the taxpayer or someone claiming in the interest of a taxpayer may bring a suit for refund under § 1346(a)(1). See *First National Bank of Emlenton, Pa.* v. *United States*, 265 F. 2d 297 (3rd Cir. 1959). The government overlooks, however, the fact that the AFSC did not

withhold 51.6% of the taxes required to be withheld under § 3402 [2] of the Internal Revenue Code of 1954 of certain employees, but paid such amount to its employees. However, the AFSC is liable for the full payment of the tax required to be deducted and withheld regardless of whether or not it withholds the tax.[3] The problem is that the AFSC would be entitled to a refund if we find that plaintiffs Cleveland and Cadwallader are entitled to the relief which they seek because the government will have collected the tax due to it two times instead of only once. In other words, AFSC's status as a taxpayer turns on whether or not it is required to continue to withhold 51.6% of the taxes of certain of its employees pursuant to § 3403 of the Internal Revenue Code because then and only then will it be entitled to a refund for overpayment under § 6414.[4]

---

[2] Sec. 3402 [as amended by Sec. 101(a), Tax Adjustment Act of 1966, P.L. 89-368, 68A Stat. 3] INCOME TAX COLLECTED AT SOURCE.

(a) *Requirement of Withholding.*—Every employer making payment of wages shall deduct and withhold upon such wages (except as otherwise provided in this section) a tax determined in accordance with the following tables. . . .

[3] See 26 U.S.C. § 3403.

[4] Sec. 6414 INCOME TAX WITHHELD.

In the case of an overpayment of tax imposed by chapter 24, or by chapter 3, refund or credit shall be made to the employer or to the withholding agent, as the case may be, only to the extent that the amount of such overpayment was not deducted and withheld by the employer or withholding agent.

It would appear that the AFSC would have standing to make a claim for a refund under § 6414 "to the extent that the amount of such over-payment was not deducted and withheld" by it. How else could such a suit be maintained in the case of an overpayment. We find that the AFSC is a "taxpayer" for purposes of § 1346(a)(1), and we therefore have jurisdiction over the subject matter with respect to it.

We come then to the question of whether or not the withholding method of collecting a certain portion of plaintiff's taxes which we have found to be used for war related purposes is unconstitutional as applied to the plaintiffs Cleveland and Cadwallader as a restriction on the free exercise of their religious beliefs as Quakers. This is indeed a unique and difficult case and one which we admit has troubled us from its inception.

The plaintiffs contend that we must test the government's method of withholding taxes by first determining whether the claimed protected activity is religiously motivated; second, whether that activity is restricted or abridged by the challenged provision; and third, if the first two requirements are met, whether there is sufficiently strong or compelling governmental interest in the use of the challenged provision that the otherwise protected activity of bearing witness by having the right to refuse to pay that portion of their taxes used by the government for war purposes may be restricted or abridged. See *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972). The gov-

ernment gives us no such help in articulating what test it would have us apply but rather asserts that Congress has the power to collect taxes to be used for the purposes of war and therefore has the power to collect such taxes by whatever means it desires.

There is no doubt in our minds that the claimed protected activity of bearing witness by refusing to pay the war taxes involved herein on the part of plaintiffs Cleveland and Cadwallader is religiously motivated. Each plaintiff has demonstrated his and her strong belief in the teachings of the Quaker religion by establishing a long history of membership in and activities related to the Quaker religion and as employees of the American Friends Service Committee. Each is conscientiously opposed to the participation in war in any form. Each objects to the withholding method of collecting 51.6% of their taxes on constitutional grounds. The government has produced no evidence which would rebut plaintiffs' showing that bearing witness is an integral part of their religious practice as Quakers, and we find that the claimed protected activity is religiously motivated within the meaning of the First Amendment.

The second question which we must consider is whether the activity of bearing witness to the participation in war in any form by refusing to pay certain war taxes has been restricted or abridged by the requirement that the AFSC withhold these taxes as any other employer would be required to do under the Internal Revenue Code. The determination of

this issue depends on how we view the process of bearing witness in the context of this case.

Quakers have for many hundreds of years taken the position that they could not engage in war or violence of any kind and could not take the life of another human being. In more recent years, this view has come to be known as the "peace testimony." The peace testimony is not a negative concept but is rather a positive idea requiring Quakers generally to strive to make war and violence unnecessary. Not all Quakers embrace the peace testimony as completely as others, and it is for each member of the faith to determine the parameters of his or her own peace testimony.

When the peace testimony of individual Quakers comes into conflict with a governmental requirement, the first step usually taken is to petition the government to change its position. Quakers worked out such a change and compromise with respect to alternative service during World War I and thereafter. If such a compromise cannot be worked out then the individual must re-examine his or her conscience to determine if it is possible to live with the government's requirement or if not, then to disobey the law so as not to violate conscience.

As applied to this case, plaintiffs Cleveland and Cadwallader argue that their consciences are being violated by their inability to refuse to pay a certain portion of their taxes for war related purposes even though they know that ultimately they will be required to pay the full amount they owe. However,

they feel and argue that they have a responsibility to themselves which is religiously motivated to refuse to pay such taxes because it violates their beliefs—their peace testimony.

We are of the opinion that the withholding method of collection of taxes does foreclose plaintiffs' ability to freely exercise that part of their beliefs requiring them to refuse to participate in war in any form with respect to the payment of war taxes. The tax which is withheld is in fact a tax on their incomes which means that the support of whichever war we happen to be engaged in is coming out of their pockets. The "support of war" also includes the payment of taxes in time of "peace" so long as those taxes are used to support the military's defense budget generally. Quakers make no distinction between an offensive or a defensive war. Both are equally objectionable.

The final and most important question to be determined is whether or not the government's interest in the use of the withholding method of collecting taxes is so great and compelling as to outweigh the religious interests which the plaintiffs seek to protect. Over the years, the Supreme Court of the United States has placed a heavy burden on the government to establish which compelling state interests are at stake so that the balance may be struck between individual First Amendment rights and compelling, legitimate state interests. See *Sherbert* v. *Verner*, 374 U.S. 398 (1963). This burden must be met by a presentation of evidence upon which we can make

certain findings of fact to support whatever balance is struck.

It appears obvious to us that the government has an interest in maintaining a uniform, efficient and orderly system of collecting federal income taxes in the United States. The withholding provisions of the Internal Revenue Code would appear to be an integral part of the maintenance of this uniform and orderly system of collection. We will further take judicial notice of the fact that the great majority of federal income taxes are withheld at their source pursuant to the requirements of 26 U.S.C. § 3402. We must balance the possible disruption to this system of collection against the individual rights of these two plaintiffs to engage in the free exercise of their religion. Additionally, the government did show that the interest and penalty assessed against small amounts of tax deficiencies would not cover the cost to the Internal Revenue Service of collecting the tax through the levy process.

The plaintiffs on the other hand have shown that since 1970, the Internal Revenue Service has received by way of the levy process, every tax dollar to which it is entitled despite the fact that the AFSC has not withheld 51.6% of the federal income tax of plaintiffs Cleveland and Cadwallader required by the statute. At this point in time, we must acknowledge the fact that the government and the plaintiffs Cleveland and Cadwallader and AFSC have been quite successful in working out a difficult confrontation of ideology without causing any substantial dislocations

or burdens to befall the government. The additional cost of collection in certain instances is the only specific additional burden placed on the government.

We further note that if plaintiffs Cleveland and Cadwallader were self-employed, they would not be in Court seeking the relief requested because they would not be subject to the withholding requirements of the Internal Revenue Code. The Internal Revenue Service would then be forced to deal with them as it must deal with any self-employed person who has refused to pay his or her income taxes. Consequently, we do not feel that we are creating a new problem for the Internal Revenue Service which will necessitate its having to devise a new procedure for collecting the tax to which it is entitled. As we noted above, the Service has been levying on plaintiffs' property since 1970 and has received all monies cursently due it by that process.

We believe that the government has failed to establish that its interest in the use of the withholding method of collecting taxes is so great and compelling that it outweighs the religious interests which the plaintiffs seek to protect in this case. The additional cost of collection, if any, is a small price to pay when compared with the possible frustration of the religious practice of bearing witness to one's conscience which practice has sought the aegis of the First Amendment in the unique context of this case.

In *Sherbert* v. *Verner*, 374 U.S. 398 (1963), the Supreme Court held

> ". . . that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, '[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation.'" 374 U.S. at 406

The balancing of the interests apparent on each side is a difficult task in all but the clearest of cases. The *Sherbert* test set forth above and as applied to this case requires a showing by the government that a decision protecting the religious activity in question would be likely to result in placing a substantial burden on the ability of the Internal Revenue Service to collect the tax revenues to which it is entitled. We do not believe that the government has established the likelihood of such a burden based on the record before us, and we therefore hold that the withholding method of collecting the federal income taxes of plaintiffs Cleveland and Cadwallader violates their First Amendment rights to the free exercise of their religion.

We note that the fact that the plaintiff employees are working for a plaintiff employer which also shares their beliefs and is willing to accommodate them in this situation is one factor which leads us to the result herein. The employer AFSC will be as much affected by this decision as the employees and its willingness to compute and not withhold the tax involved herein plus its history of complete candor in its dealings with the Internal Revenue Service insure that the government will get every tax dollar to which it is entitled.

Because we hold that the means of collecting plaintiffs' taxes by withholding them at the source restricts the free exercise of their religion by foreclosing a means by which they may bear witness to their opposition to the participation in war in any form which opposition is a fundamental part of their religious teaching as Quakers, the AFSC is likewise exempt from withholding 51.6% of the taxes of plaintiffs Cleveland and Cadwallader. Further, the AFSC is entitled to a refund of $574.09 which represents the sum of amounts not withheld from plaintiffs Cleveland and Cadwallader and several other employees not plaintiffs herein. AFSC is entitled to the refund because the government has at present received two times the amount of the tax to which they are entitled. It would be little comfort to the plaintiffs herein if we were to hold that the withholding requirements indeed abridge the free exercise of their religion without permitting the employer AFSC the right to a refund. Our holding today in no way affects the operation of 26 U.S.C. § 3403. We have not been asked to exempt the American Friends Service Committee from the operation of that statute and we will not do so. Also, we do not hold that the AFSC may cease to withhold taxes from other employees who are not plaintiffs herein. The AFSC may seek to exempt future employees by first seeking such exemption from the Internal Revenue Service and finally the Court, if necessary. This is not a class action, and we are powerless to extend the hold-

ing beyond the named plaintiffs who have actually participated in this suit.

Any statements of fact or law found in this Court's discussions regarding liability or damages which have not been specifically enumerated in the sections entitled "Findings of Fact" and "Conclusions of Law" respectively, are hereby designated "Supplemental Findings of Fact and Conclusions of Law."

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter pursuant to 28 U.S.C. § 1331 (a) and § 1346(a)(1).

2. The plaintiffs Lorraine Cleveland and Leonard Cadwallader have standing to raise the constitutionality of the withholding provisions of the Internal Revenue Code as they apply to their particular situation.

3. The plaintiff AFSC has standing to sue for a refund under 28 U.S.C. § 1346(a)(1).

4. Section 26 U.S.C. § 7421(a) of the Internal Revenue Code is not a bar to this action.

5. Section 26 U.S.C. § 3402 is unconstitutional as applied to the facts of this case in that it operates as an abridgment to the free exercise of the religion of plaintiffs Lorraine Cleveland and Leonard Cadwallader.

6. The defendant United States of America will be enjoined from collecting 51.6% of the federal income taxes of plaintiffs Lorraine Cleveland and Leo-

nard Cadwallader by requiring such taxes to be withheld at the source because such withholding violates the free exercise of their religion as members of the Society of Friends.

7. The defendant United States of America is liable for the refund of $574.09 which represent amounts not withheld from plaintiffs Cleveland and Cadwallader and certain other employees not plaintiffs to this action. Such amounts represent an overpayment of taxes not withheld under § 6414 of the Internal Revenue Code.

APPENDIX B

ORDER

AND NOW, to wit, this 31st day of December, 1973, it is hereby Ordered that the defendant United States of America is enjoined from further collection of 51.6% of the federal income taxes of plaintiff Lorraine Cleveland and plaintiff Leonard Cadwallader by use of the withholding method of collecting said taxes from said plaintiffs' employer American Friends Service Committee.

It is further Ordered that the plaintiff American Friends Service Committee cease withholding 51.6% of the federal income tax of plaintiff Lorraine Cleveland and plaintiff Leonard Cadwallader.

It is further Ordered that judgment be entered in favor of plaintiff American Friends Service Committee and against the defendant United States of America in the amount of $574.09.

It is further Ordered that all plaintiffs are awarded their costs respectively.

IT IS SO ORDERED.

/s/ Clarence C. Newcomer
CLARENCE C. NEWCOMER, J.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-1405

AMERICAN FRIENDS SERVICE COMMITTEE, LORRAINE CLEVELAND and LEONARD CADWALLADER, PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

NOTICE OF APPEAL

Notice is hereby given that pursuant to 28 U.S.C. § 1252, defendant, United States of America, appeals to the United States Supreme Court from the final judgment entered in this action on the 31st day of December, 1973.

January 30, 1974.

ROBERT E. J. CURRAN
United States Attorney
Attorney for Defendant

☆ U. S. GOVERNMENT PRINTING OFFICE: 1974 547817 261

FILE COPY

FILE
AUG 27
MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1791

UNITED STATES OF AMERICA,

Appellant,

—v.—

AMERICAN FRIENDS SERVICE COMMITTEE, *et al.*,

Respondents.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOTION TO DISMISS OR AFFIRM

MARVIN M. KARPATKIN
STEVEN DELIBERT
KARPATKIN, OHRENSTEIN & POLLET
1345 Avenue of the Americas
New York, New York 10019

ALAN REEVE HUNT
DUANE, MORRIS & HECKSCHER
100 South Broad Street
Philadelphia, Pa. 19110

Attorneys for Appellees

INDEX

PAGE

Statement of the Case 1

ARGUMENT:

POINT I—

The questions presented are not so substantial as to require review by this Court 7

POINT II—

The decision below is correct and should be affirmed 10

A. The Court Below Correctly Held the Withholding Statute to Be Unconstitutional as Applied to These Plaintiffs 10

B. The District Court Had Jurisdiction to Grant the Injunction 21

CONCLUSION 24

TABLE OF AUTHORITIES

Cases:

Application of President and Directors of Georgetown College, Inc., 118 U.S. App. D.C. 80, 331 F.2d 1000, *cert. den.* 377 U.S. 978 (1964) 19

Autenrieth v. Cullen, 418 F.2d 586 (9th Cir. 1969), *cert. den.*, 397 U.S. 1036 (1970) 8, 16, 17

PAGE

Bob Jones University v. Simon, —— U.S. ——, 42 U.S.L.W. 4721, No. 72-1940 (May 15, 1974) 22, 23
Buck v. United States, 466 F.2d 481 (10th Cir. 1972) 21

Cantwell v. Connecticut, 310 U.S. 296 (1940) 13-15
Cleveland v. United States, 329 U.S. 14 (1946) 19
Commissioner v. "Americans United," —— U.S. ——, 42 U.S.L.W. 4711, No. 2-1371 (May 15, 1974) 23

Dugan v. Rank, 372 U.S. 609 (1963) 21

Enochs v. Williams Packing & Nav. Co., 370 U.S. 1 (1962) 22

Follett v. McCormick, 321 U.S. 573 (1944) 11
Founding Church of Scientology v. United States, 409 F.2d 1146 (D.C. Cir. 1969) 11

Gillette v. United States, 401 U.S. 437 (1971) 14

In re Jenison, 265 Minn. 96, 120 N.W.2d 515, *vac.* 375 U.S. 14, *on remand* 267 Minn. 136, 125 N.W.2d 588 (1963) 18
Jacobson v. Massachusetts, 197 U.S. 11 (1905) 19
Jules Hairstylists of Maryland, Inc. v. United States, 268 F. Supp. 511 (D. Md. 1967), *aff'd* 389 F.2d 389 (4th Cir. 1968), *cert. den.* 391 U.S. 934 (1968) 21

Larson v. Domestic & Foreign Service Corp., 337 U.S. 683 (1949) 21

Matya v. United States, 478 F.2d 330 (8th Cir. 1973) 21
Moore Ice Cream Co. v. Rose, 289 U.S. 373 (1933) 21

PAGE

Murdock v. Pennsylvania, 319 U.S. 105 (1943) 11
Muste v. Commissioner, 35 T.C. 913 (1961) 8

Prince v. Massachusetts, 321 U.S. 158 (1944) 19

Sherbert v. Verner, 374 U.S. 398 (1963) 14-16, 18, 19
State v. Everly, 146 S.E.2d 705 (W. Va. 1966) 18

United States v. Ballard, 322 U.S. 78 (1944) 11
United States v. Hillyard, 52 F. Supp. 612 (E.D. Wash. 1943) 18
United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969) 11
United States v. Sherwood, 312 U.S. 584 (1941) 21

West Virginia State Board of Education v. Barnette, 319 U.S. 62 (1943) 14-16
Wisconsin v. Yoder, 406 U.S. 205 (1972) 14-16, 20

Constitution:

United States Constitution, First Amendment 1, 4, 11, 15, 18, 19, 20
United States Constitution, Fourteenth Amendment 16

Statutes:

26 U.S.C. §3402 4

26 U.S.C. §7421(a) 21, 23

50 U.S.C. App. §456(j) 9

Act of June 9, 1943, c. 120, §2(a), 57 Stat. 126 20

PAGE

Other Authorities:

Cleveland, "My Victory Against 'War Taxes,'" *New York Times*, Feb. 15, 1974, at 33 17

FAITH AND PRACTICE, THE BOOK OF DISCIPLINE OF THE NEW YORK YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS (1968) 12

Matthew, VII:1 18

H. Rep. No. 268, Seventy-Eighth Congress, First Sess. 20

REGISTRATION AND CLASSIFICATION OF SELECTIVE SERVICE REGISTRANTS (Monthly Report of Statistical Section, Management Information Statistics Office) 9

S. Rep. No. 221, Seventy-Eighth Congress, First Sess. .. 20

Stern & Gressman, SUPREME COURT PRACTICE (4th Ed. 1969) 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1791

UNITED STATES OF AMERICA,

Appellant,

—v.—

AMERICAN FRIENDS SERVICE COMMITTEE, *et al.*,

Respondents.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOTION TO DISMISS OR AFFIRM

The Appellees herein, the American Friends Service Committee, Lorraine Cleveland and Leonard Cadwallader, pursuant to Rule 16 of the Rules of this Court, move that this appeal be dismissed, or that the final judgment and decree of the court below be affirmed, on the grounds that the question is so plainly insubstantial, and the decision below so plainly correct, as not to warrant further review by this Court.

Statement of the Case

The Solicitor General brings to this Court for review on direct appeal a decision in which the court below, giving effect to the clear dictates of the First Amendment and of innumerable decisions of this Court, required that the gov-

ernment take certain minimal steps to accommodate its methods of tax collection to the religious and conscientious beliefs of two of its citizens.

The Appellees, American Friends Service Committee (hereinafter "AFSC" or "Service Committee"), and two of its employees, Lorraine Cleveland and Leonard Cadwallader,[1] instituted this action in order to compel the cessation of further use by the government of the withholding method of collecting from the individual plaintiffs so much of their federal income taxes as is applied to military purposes. Contrary to the implications in the government's Jurisdictional Statement (p. 17, fn. 9), no claim was made that the imposition of the taxes is itself a violation of First Amendment rights, but only that the use of the withholding method, where numerous other means of collection are available, gives rise to such a violation in the context of the unique facts of this case. The plaintiffs sought both an injunction against the further use of withholding, and on behalf of AFSC, a refund of $574.09, representing that portion of the employees' federal income taxes which was not withheld from the employees' salaries but was paid to the government from the Service Committee's own funds in the quarterly period in question, October 1, 1969, through December 31, 1969.

The AFSC is a religious corporation of the State of Delaware, which throughout more than one half century of its existence has, on behalf of the Religious Society of Friends (Quakers), carried out religious, charitable, social, philanthropic and relief work on an international scale,

[1] Cadwallader has since resigned from the Service Committee for reasons unrelated to this action.

with especial concern for the expression and implementation of the Quaker peace testimony as an integral part of Quaker religious belief and religious testimony. (Appendix A to Jurisdictional Statement, at 1a-2a; hereinafter denoted by page numbers followed by the letter "a".) The employee plaintiffs, Cleveland and Cadwallader, citizens and residents of the United States and of the Commonwealth of Pennsylvania, are conscientiously opposed to participation in or support of war in any form, and this religiously based conscientious objection specifically includes objection to such support as is rendered by the payment of the portion of their federal income taxes which is applied to military or defense purposes (2a-3a). For this reason, Cleveland and Cadwallader in 1969 requested that AFSC cease withholding from their salaries the portion of their federal income taxes then attributable to the preparation for and waging of warfare. AFSC felt itself morally compelled, as a religious corporation dedicated to serving world peace, to honor this religiously and conscientiously motivated request of its employees, and therefore ceased to withhold such taxes in the final quarter of the calendar year 1969. The amount not withheld was 51.6% of the taxes otherwise due, a proportion determined by the Friends Committee on National Legislation to be the proportion of the federal budget devoted to military purposes (5a).[2]

---

[2] The figure of 51.6% of the federal budget as the proportion expended for military purposes was found by the court below to be "a reasonable, rational and fair percentage amount which can be used to determine the proportion of the individual plaintiffs' taxes, which are spent for purposes to which they conscientiously object" (9a). The finding was based on extensive testimony of expert witnesses introduced by plaintiffs, and the government made no effort to contradict this testimony.

Although AFSC thus discontinued withholding these amounts from its employees' salaries, it nevertheless continued to pay to the Internal Revenue Service, out of its own corporate funds, amounts equivalent to the amounts of taxes not withheld. AFSC felt itself to have little choice as to the making of such payments since, should it fail to do so, both AFSC and its responsible officers would face a risk of criminal prosecution for failure to comply with the requirements of 26 U.S.C. §3402, the statutory provision imposing the obligation of withholding. Each payment to the Internal Revenue Service by AFSC was followed by a claim for refund of such monies, as erroneously and illegally assessed, in violation of the First Amendment to the United States Constitution, but each such claim was denied (5a-6a).

At trial, AFSC presented extensive and unrebutted evidence, and the District Court found, that AFSC has historically been dedicated to the purposes stated above; it was also demonstrated that AFSC was threatened with irreparable economic injury because of the threat of resignation by employees whose expression of their religious objection to the support of war was being abridged by the operation of the withholding tax laws, and because of continued questioning by contributors of the propriety of their donations to an organization acting as a collector of war taxes. Evidence was also presented that AFSC was being seriously injured by its forced participation in the frustration of its employees' ability to stand witness to their deeply held religious opposition to war. The Service Committee, an organization founded on Quaker concern for individual conscience, has throughout its history

sought to implement these beliefs through its untiring labors in behalf of world peace and reconciliation, fundamental elements of Quaker belief, but was placed by the withholding statutes in such a position that it must aid the government in contravening the very individual conscience which it exists to support (4a-5a).

The individual plaintiffs, Cleveland and Cadwallader, likewise demonstrated incontestably, and the District Court found, that the withholding scheme constituted a serious abridgement of the free exercise of their religion. Both are deeply and fundamentally opposed to war, as demonstrated by the very fact of their employment with the Service Committee. Indeed, in the case of Cadwallader, the Selective Service System had recognized the sincerity and depth of his belief by granting him conscientious objector status. For both Cleveland and Cadwallader, a central and inseparable part of their faith is that they must give active expression to their religious objections to war, in order to bear witness to their beliefs. To force payment of their war taxes without tolerating even a symbolic gesture of refusal and enforced collection by the government, is to suppress the most central and deeply held tenets of their religious beliefs. When the government, by its insistence on the withholding method of collecting taxes, denies them the opportunity to give expression to these beliefs, it abridges directly the free exercise of their most cherished religious and conscientious beliefs. It is from this abridgement that the plaintiffs sought relief in this action (2a-4a).

Finally, the plaintiffs presented extensive proof, unrebutted by the government, that there is available to the

government a wide range of means for collecting the taxes here involved, with little or no additional effort or inconvenience as compared to the withholding method.[3] They further demonstrated that the government had in fact collected every penny in taxes which was due it, and that the government's hand-wringing speculations on the collapse of the income tax system, should the plaintiffs be granted the relief they sought, were totally without basis in fact (7a-8a).

Based upon these nearly, even totally, unique facts, of employer and employees who share in similar deeply held religious objections to the government's actions, and the nearly microscopic interests of the government in continuing the use of withholding, the court below held that the government simply had not shown a sufficient interest in the use of the withholding method to override the basic rights guaranteed to the plaintiffs by the United States Constitution (19a).

---

[3] This evidence was introduced chiefly through the testimony of Bernard V. Lentz, Esq., a distinguished member of the Philadelphia bar, and a leading expert on federal taxation, including particularly the collection procedures employed by the Internal Revenue Service. Mr. Lentz's testimony was unshaken by extensive and vigorous cross-examination, and the government offered no contradictory proof of its own. (Record of Trial, at 208-250.)

ARGUMENT

POINT I

The questions presented are not so substantial as to require review by this Court.

Throughout the Jurisdictional Statement, the Solicitor General repeatedly asserts that the questions presented by this case are of overwhelming importance, and that plenary consideration by this Court is necessary in order to review a decision which will otherwise shake the Republic to its very foundations. It is respectfully submitted that the decision by the court below has no such cataclysmic implications. The issues presented below, and the interests which the appellees sought to protect in the court below, are indeed of the greatest importance to them, involving the right to exercise their most deeply cherished religious beliefs. However, the decision below, which does no more than recognize the requirements of innumerable decisions of this Court, and apply those requirements in a unique and limited context, will not have the far reaching effects predicted for it by the government.

Thus, the Solicitor General fears that the decision below "will *doubtless* have a significant impact upon the revenue," and that it will "*undoubtedly* engender a substantial volume of litigation" (p. 8; emphasis added), since it permits the exercise of religious beliefs by a taxpayer who objects as a matter of conscience to "particular" government expenditures. The District Court made no such ruling and the decision below will not open up the floodgates. First, it is significant that, although seven months have elapsed

since the decision below, this Court has not been advised of a single case—much less "a substantial volume of litigation"—which has been instituted based on the same unique principle. Second, the Solicitor General overlooks the carefully circumscribed scope of the decision below. It is expressly limited to the unique facts of a case which presents the unusual juxtaposition of (a) a religious corporation as employer; (b) employees who are conscientious objectors of the same religious group; (c) the central role of "peace testimony" common to employer and employee; (d) the religious employer's long history of cooperation and candor with the government, consistent with its historical tradition, which goes back to the earliest days of the Republic, of seeking accommodation and compromise with government in those rare instances where there is a confrontation between individual religious conscience, and a national decision to make war.

Moreover, despite the speculations of disaster by the Solicitor General, unfortunately abetted by equally baseless forebodings in such cases as *Autenrieth* v. *Cullen*, 418 F.2d 586 (9th Cir. 1969), *cert. den.*, 397 U.S. 1036 (1970); and *Muste* v. *Commissioner*, 35 T.C. 913 (1961),[4] the most relevant statistics suggest that no vast numbers

---

[4] The government has consistently, in the court below and in this Court, failed or refused to recognize the true nature of this case. Repeatedly, by its citations to such cases as *Autenrieth* and *Muste*, and otherwise, the government has sought to imply that this is a case where the plaintiffs challenge the constitutionality of the tax itself, or of the uses to which it is put, and that they seek to be relieved of any obligation of payment at all (Jurisdictional Statement, at p. 12, p. 17, fn. 9). But the plaintiffs have made clear at every turn that they do not here make any such challenge; the only claim, as the court below recognized, is that the taxes must be collected by some other means.

of taxpayers will in fact object to the withholding method on conscientious grounds.[5]

In addition to the small number of persons who might take advantage of the possible benefits of the decision below, the appellees presented substantial evidence, and the court below found, as a matter of fact, that little, if any, additional inconvenience to the government would result if the Internal Revenue Service were required to adopt an alternative means of tax collection for the few people here involved. It was also found as a matter of fact that all of the taxes involved, together with interest, and penalties,[6] had in fact been fully collected by the government.

Thus, at most, the impact of the decision below, insofar as it will affect the government, is to cause a minor bureaucratic inconvenience, and the decision does not rise to the

---

[5] In a parallel situation, the various Selective Service acts have always provided an exemption for conscientious objectors. 50 U.S.C. App. §456(j). Even in June, 1971, at the height of the Vietnam war, only 1.11% of draft-eligible men had been placed in Class I-O (by reason of religious training and belief, conscientiously opposed to participation in war in any form). Figures compiled by National Interreligious Service Board for Conscientious Objectors, from statistics contained in Selective Service System, REGISTRATION AND CLASSIFICATION OF SELECTIVE SERVICE REGISTRANTS (Monthly Report of Statistical Section, Management Information Statistics Office).

[6] The court below found that the 6% annual interest rate, and ½ of 1% per month penalty, assessed against the individual plaintiffs "are calculated at a rate to . . . reimburse the government for any collection costs which it might incur in resorting to the levy process" (7a-8a). The court also found, however, that at least in cases where only small amounts of money were due, the interest and penalties would not cover the additional costs of collection (8a). Nevertheless, the District Court correctly went on to hold that the minuscule additional costs to the government could not outweigh the plaintiffs' fundamental constitutional rights to the free exercise of their religion. See Point IIA, *infra*.

level of importance required for review by this Court. *Cf.* Stern & Gressman, SUPREME COURT PRACTICE, §4.29 (4th Ed. 1969).[7]

POINT II

The decision below is correct and should be affirmed.

A. *The Court Below Correctly Held the Withholding Statute to Be Unconstitutional as Applied to These Plaintiffs.*

There can be little doubt that the decision below is correct on its merits. The appellees demonstrated in the court below that the withholding system of tax collection, as applied to them, constitutes a direct and serious abridgement of their deeply cherished religious beliefs, and the government would be faced with little if any difficulty in resorting to other means to accomplish its goal of collecting the taxes in question. See note 3, *supra*. The government had full opportunity in the court below to present evidence as to any possible difficulties which it might face if it were prevented from collecting taxes from Cleveland and Cadwallader by the withholding method; it did not choose to present even a shred of such evidence.

Its arguments in this Court, like its arguments in the court below, demonstrate an utter misperception of the analysis to be applied in a case involving the free exercise of religion.

Thus, the government asserts that the finding of the court below, that the use of the withholding method does abridge the appellees' free exercise of their religious be-

---

[7] By suggesting that appellees are urging a principle which would allow resistance to any "particular" government expenditure, the Solicitor General reveals a total misunderstanding both of the issues

liefs, "cannot be squared with this Court's decisions construing the Free Exercise Clause of the First Amendment." (Jurisdictional Statement, at p. 9.) Such a finding of fact, however, is plainly in no way in conflict with any decision of this Court.[8] The plaintiffs demonstrated by overwhelm-

---

in this case and the critical essence of conscientious objection as traditionally recognized in American law. Appellees are not espousing a system of moral anarchy where they are free to obey or disobey any law by merely uttering the word "conscience". The conscientious objection principle which our legal system has recognized since the earliest days of the Republic is limited to participation in war—the recruitment, organization, training and operation of the armed forces, where citizens are compelled to obey military orders to kill other human beings in accordance with national policy. Appellees' concern is not with "particular" governmental expenditures, but with all governmental expenditures which involve individual taxpayers in participation in war—the killing of other human beings—in any form. And, to reiterate, they do not even seek any conscientious objector exemption from this tax payment. They seek only an opportunity morally to confront the Government as tax collector as it takes their assets.

[8] The government also appears to take issue with the substance of the plaintiffs' religious beliefs, objecting to their "erroneous belief" as to the nature of withholding (Jurisdictional Statement at p. 12, fn. 5), and asserting that the collection method in question "cannot rationally have a coercive effect on religious practices . . . ." (*Id.* at 10). Any such inquiry into the correctness of the content of religious beliefs is, of course, absolutely prohibited. *United States* v. *Ballard*, 322 U.S. 78, 86-87 (1944): "Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs . . . . When the triers of fact undertake that task, they enter a forbidden domain." See also *Founding Church of Scientology* v. *United States*, 409 F.2d 1146, 1156 (D.C. Cir. 1969); *cf. United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969). Nor is the government's position supported by its citation to *Follett* v. *McCormick*, 321 U.S. 573, 577-578 (1944) and *Murdock* v. *Pennsylvania*, 319 U.S. 105, 112 (1943). As those cases observed, a generally imposed burden or duty, with only indirect effect on the religious interests asserted, may not be a forbidden abridgement; but governmental action which operates directly against the religious interest, such as the licensing schemes in those cases, and the tax collection scheme here, can indeed transgress the limitations of the First Amendment.

ing evidence that they hold conscientious beliefs, based on deep religious convictions, which compel them to oppose participation in or support of war or military activity in any form. This religious opposition to the support of military activity extends to the payment of that portion of their taxes which is used for such purposes. As an integral and inseparable part of these conscientious convictions, both Cleveland and Cadwallader believe it to be their religiously compelled duty to give active expression to their beliefs, and, thus, to bear witness to their opposition to the support of war, by refusing the voluntary payment of any taxes which are used for war.[9] Likewise, the Service Committee presented extensive and unrebutted evidence of the nature of its work, and its very purposes for existence. In addition to the expert testimony, referred to by the court below, of Dr. Edwin Bronner, an historian specializing in the history of Quakerism (3a-4a), there was also presented the testimony of Dr. Henry J. Cadbury, one of the founders of the AFSC, who testified to its establishment during World War I as a means by which Quaker young men, objecting to military service, could instead be employed to render aid and assistance to those in need—an example of the very type of accommodation which is all that plaintiffs seek in this case.

---

[9] The centrality to Quaker belief of bearing witness to one's conscience has often been expressed. One clear statement of this duty, in the context of opposition to war, is to be found in FAITH AND PRACTICE, THE BOOK OF DISCIPLINE OF THE NEW YORK YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS at 42 (1968): "Friends will ever be concerned to relate their religious insights to the realities of international life. Opportunities for courageous action and for the expression of invincible good will remain under any political system. Whatever the system and whatever the situation that calls for decision, Friends are called upon to make their witness."

The United States, however, has imposed on the AFSC as employer of the individual plaintiffs, a statutory requirement of withholding from their salaries substantially all taxes before they are received by the individual plaintiffs. Because the United States has chosen this method for the collection of taxes rather than any of numerous other methods available to it, the individual plaintiffs have been denied any opportunity to give to their religious beliefs the expression which their consciences command. For this reason, the individual plaintiffs suffered a serious abridgement of their right to the free exercise of their religion, as guaranteed to them by the First Amendment, and the relief which they obtained in the court below is only a requirement that a less onerous means be used to collect the taxes in question.

The government, however, appears to argue that since the withholding statute is neutral on its face, and is imposed in order to attain the permissible goal of the collection of taxes, it cannot as a matter of law be found to abridge the free exercise of the plaintiffs' religious beliefs. The seemingly apparent distinction, which appears nevertheless so difficult for the government to understand, is simply the distinction between the end which the government seeks and the means which it uses to accomplish that end. This distinction, in matters bearing on the free exercise of religion, has been recognized by this Court for well over three decades. In *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940), this Court held unanimously that while a state might properly seek to safeguard its citizens against the perpetration of frauds under the cloak of religion, "... the question remains whether the method adopted by Connecticut to that end transgresses the liberty safeguarded by the Constitution." 310 U.S. at 304-305.

Innumerable cases since *Cantwell* have made precisely the same distinction. Most recently in *Wisconsin* v. *Yoder*, 406 U.S. 205, 220 (1972), it was held that "a regulation neutral on its face may, in its application, nonetheless offend the Constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." Similarly, in *Sherbert* v. *Verner*, 374 U.S. 398 (1963), it was held that while the state of South Carolina obviously might properly impose certain regulations to avoid the depletion of state unemployment compensation funds by false claims, the regulations could not stand when they were applied to penalize a Seventh Day Adventist's religiously compelled refusal to work on a Saturday. The state was compelled to find other means than the denial of benefits to persons in Mrs. Sherbert's position. Likewise, in *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 62 (1943), school authorities sought to instill patriotism in their pupils, certainly a permissible activity, especially in a time of declared war, but the means chosen to do this, by compelling all students to recite the Pledge of Allegiance, was held improper, where it conflicted with the religious objections to such exercises which some students held.

The standard which the Solicitor General would have this Court apply to determine whether the court below was correct is nowhere articulated in the Jurisdictional Statement. The proper standard, however, is clearly set forth in a series of opinions of this Court, and it in no way supports the government's position. These opinions were cautiously followed, with scrupulous fidelity, by the court below. Thus, neither plaintiffs, nor the court below, are in disagreement with the observation from *Gillette* v.

United States, 401 U.S. 437, 461 (1971), that "[o]ur cases do not at their farthest reach support the proposition that a stance of conscientious opposition relieves an objector from any colliding duty fixed by a democratic government." This Court's decisions do, however, plainly support the proposition that in some circumstances, the duties fixed by government must in some measure yield to the religious and conscientious beliefs of its citizens.

Where, as here, it is conceded that the government has a valid secular interest in the prohibition or regulation which it seeks to impose, a First Amendment Free Exercise claim must be tested by a threefold inquiry: first, whether the claimed protected activity is, indeed, religiously motivated; second, whether that activity is restricted or abridged by the challenged provision; and, third, if both the other requirements are met, whether there is a sufficiently strong governmental interest in the use of the challenged provision that the otherwise protected activity may be restricted or abridged. *Wisconsin* v. *Yoder,* 406 U.S. 205, 215 (1972); *Sherbert* v. *Verner,* 374 U.S. 398 (1963); *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624 (1943); *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940).

The plaintiffs clearly established in the court below that their conduct is religiously motivated and that the withholding scheme in fact restricts that conduct. Once such a showing is made, a burden is cast upon the government to come forward with some showing of a sufficiently great interest in maintaining that provision to justify the infringement of the plaintiffs' otherwise protected First Amendment rights. *Sherbert* v. *Verner, supra,* 374 U.S. at 406-407. The government has utterly failed to carry this

burden. While the strength of the showing required has been expressed in different ways over the past quarter century, the burden has consistently been a heavy one. In *Sherbert,* it was held " . . . that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, '[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation.' " 374 U.S. at 406. In *Barnette,* Mr. Justice Jackson held for the Court that " . . . freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds [as the 'rational basis' test for due process under the Fourteenth Amendment]. They are susceptible of restriction only to prevent grave and immediate dangers to interests which the state may lawfully protect." 319 U.S. at 640. In *Yoder,* the State of Wisconsin sought to assert its interest in its "paramount responsibility," providing public education, an activity which "ranks at the very apex of the function of a State." 406 U.S. at 214. Even this paramount interest, however, and even its possible effect on hundreds or thousands of children, could not outweigh the religious interests asserted by the Amish in that case.

In the face of this heavy burden, the government has made no showing whatever of danger to any lawful governmental interest. It offered no proof in the court below of any serious additional burden if it must collect taxes by means other than withholding. It presents to this Court speculation from *Autenrieth* v. *Cullen,* 418 F.2d 586, 588-589 (9th Cir. 1969), *cert. den.* 397 U.S. 1036 (1970), that "if every citizen could refuse to pay all or part of his taxes because he disapproved of the government's use of the money, on religious grounds, the ability of the government

to function could be impaired or even destroyed." But *Autenrieth* involved taxpayers who claimed that they should be entirely exempted from taxation,[10] and is of little applicability where the relevant showing would be the effect of depriving the government, in strictly limited circumstances, of only one of its many means of collection of its tax revenues.

Further, if the government indeed contends that, if the decision below is allowed to stand, such multitudes of others will flock to claim its benefits that the government's functioning will be seriously threatened, an examination of the claim asserted by the plaintiffs should restore the proper perspective. This case presents the tiny minority of employees who hold deep religious objections to the payment of taxes in support of war, coupled with an equally deep religious belief that they must bear active witness to such objections. Their situation must be nearly unique when it presents also an employer which has the strongest sympathy for their position, and which indeed asserts that its own corporate religious beliefs are abridged when it is compelled to aid in restricting the free exercise of its employees' religion.

---

[10] A claim not made in this case, despite the government's repeated efforts to make it so. See, fn. 4, *supra*. The Solicitor General's Jurisdictional Statement persists in its misperception of the narrow free exercise claim involved in this case. Plaintiffs do not interpose a religious objection to allowing the government to collect the taxes in question. They do interpose a religious objection to depriving them of an opportunity to confront the government directly as tax collector. See, Cleveland, "My Victory Against 'War Taxes,'" *New York Times*, Feb. 15, 1974, at 33. It is critical to the religious tenets of their peace testimony that they state to the government, as it were, "Here are my assets. I will not resist your seizure but I do not voluntarily pay war taxes. You, my government, through your tax collector, must undergo the moral confrontation of taking these assets from me by operation of law, knowing of my conscientious objection."

Rather than base a decision in this sensitive area on the vague speculations of the government as to the disasters which may result if it is required to respect the constitutional rights of its citizens, the appropriate course is that illustrated by the sensitive decision of the Supreme Court of Minnesota, *In re Jenison,* 267 Minn. 136, 125 N.W.2d 588 (1963).[11] Mrs. Jenison was a Jehovah's Witness who took literally the Biblical command, "Judge not, that ye be not judged." Matthew 7:1. Her resultant refusal to perform jury duty, considered by the Minnesota court in the light of *Sherbert,* must be respected, and her religious objections sustained, the court held, because:

> "There has been an inadequate showing that the state's interest in obtaining competent jurors requires us to override the latter's right to the free exercise of her religion. Consequently, we hold that until and unless further experience indicates that the indiscriminate invoking of the First Amendment poses a serious threat to the effective functioning of our jury system, any person whose religious convictions prohibit compulsory jury duty shall henceforth be exempt." 125 N.W.2d at 589. See also, *e.g., United States* v. *Hillyard,* 52 F. Supp. 612 (E.D. Wash. 1943); *State* v. *Everly,* 146 S.E.2d 705 (W. Va. 1966).

Indeed, even if the government had shown a likelihood of serious harm if it should lose the power to compel the withholding of taxes as to these plaintiffs, the government

---

[11] Mrs. Jenison's conviction for contempt of court had been affirmed by the Minnesota Supreme Court on its first review of her case. *In re Jenison,* 265 Minn. 96, 120 N.W.2d 515 (1963). This Court vacated the decision and remanded the case for reconsideration in light of *Sherbert.* 375 U.S. 14 (1963).

still would not have met the burden required by *Sherbert*. Having held that Mrs. Sherbert's religiously compelled refusal to work on Saturday was indeed a protected "exercise of religion" within the meaning of the First Amendment, and that the state had failed to demonstrate the grave dangers which it must to overcome the Amendment's protection, this Court went still further, and held that "... even if the possibility of spurious claims did threaten to dilute the [State Unemployment] Fund and disrupt the scheduling of work, it would plainly be incumbent upon the appellees to demonstrate that no alternative forms of regulation would combat such abuses without infringing First Amendment rights." 374 U.S. at 407 (footnote omitted).

Like the state in *Sherbert*, the government here has failed to make any showing that it lacks alternative remedies. Indeed, the evidence showed, and the court below found as a matter of fact, that the government did have such alternative remedies in its power to levy on the taxpayers' property, and that it was using those remedies, without apparent difficulty, to the fullest extent necessary.

Thus, it is plain that this case is totally unlike those cases in which this Court has held that religious activities may properly be regulated without running afoul of the First Amendment. "The challenged . . . religious practice here does not pose a substantial threat to public safety, peace or order; if it did, analysis under the Free Exercise Clause would be substantially different. See *Jacobson* v. *Massachusetts*, 197 U.S. 11 (1905); *Prince* v. *Massachusetts*, 321 U.S. 158 (1944); *Cleveland* v. *United States*, 329 U.S. 14 (1946); *Application of President and Directors of Georgetown College, Inc.*, 118 U.S. App. D.C. 80, 331 F.2d

1000, *cert. den.*, 377 U.S. 978 (1964)." *Wisconsin* v. *Yoder*, 406 U.S. 205, at 239, n. 1 (1972) (concurring opinion of Mr. Justice White). The relief which plaintiffs seek here obviously poses no such danger. For over a century after its founding, the nation survived with no national income tax whatever; even after the enactment of such a tax, the withholding method was not used for decades, until 1943 (Act of June 9, 1943, c. 120, §2(a), 57 Stat. 126). Indeed, the legislative history cited by the government itself in the Jurisdictional Statement (p. 11), H. Rep. No. 268, 78th Cong., First Sess., pp. 1-2; S. Rep. No. 221, 78th Cong., First Sess., p. 1, makes plain that the primary purpose in the enactment of the withholding system was the protection of taxpayers, and not of the government. As taxes rose in World War II, it became more difficult to make payment in a single lump sum at the end of the tax year, and the withholding system was therefore instituted. Insofar as the challenged procedure exists for the benefit of the taxpayers, rather than that of the government, of course, the government can assert no interest whatsoever in opposition to the First Amendment claims of the respondents.

A correct application of the tests which this Court has applied in the past in free exercise cases, it is respectfully submitted, can reach only one result. The government has sought to abridge the most deeply held religious beliefs of certain of its citizens, but has been unable to show any substantial interest whatever in continuing to do so. Therefore, it must be seen that the decision of the court below was correct on the merits, and should be affirmed.

B. *The District Court Had Jurisdiction to Grant the Injunction.*

The government contends that the court below was barred from issuing the injunction in this case by the Anti-Injunction Act, 26 U.S.C. §7421(a), which provides that "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court . . . ."[12] It is abundantly clear, however, both from the language of the statute, and its purpose, that it does not bar the relief which was granted by the court below.

---

[12] The government also seeks to interpose its purported immunity to suit as a sovereign (p. 14, fn. 7), but that doctrine plainly has no application to this case. The cases offered by the government are of little relevance to the constitutional issues here presented; those cases by contrast involve water rights, *Dugan* v. *Rank*, 372 U.S. 609 (1963), or contract rights, *Larson* v. *Domestic & Foreign Service Corp.*, 337 U.S. 683 (1949); *United States* v. *Sherwood*, 312 U.S. 584 (1941), or ordinary tax questions, *Matya* v. *United States*, 478 F.2d 330 (8th Cir. 1973); *Buck* v. *United States*, 466 F.2d 481 (10th Cir. 1972). But as this Court noted in *Larson* itself, "There are limits, of course. Under our constitutional system, certain rights are protected against governmental action and, if such rights are infringed by the actions of officers of the government, it is proper that the courts have the power to grant relief against those actions." 337 U.S. at 705. To assert, on this basis, that plaintiffs might have had relief against an officer of the government, but not against the government itself, is absurd on its face; the government would hardly have reacted to this suit in any different way had one of its officers been named a defendant, or named the sole defendant. Similarly, if the plaintiffs are properly entitled to the relief granted by the court below, the result is identical whether the United States or its District Director of Internal Revenue is ordered to cease using the challenged method of collection. Indeed, the government itself has asserted this very position, when its purposes are thereby served. *Jules Hairstylists of Maryland, Inc.* v. *United States*, 268 F. Supp. 511, 514 (D. Md. 1967), *aff'd* 389 F.2d 389 (4th Cir. 1968), *cert. den.*, 391 U.S. 934 (1968). As Mr. Justice Cardozo observed, in *Moore Ice Cream Co.* v. *Rose*, 289 U.S. 373, 382-383 (1933), "A suit against a Collector who has collected a tax in the fulfillment of a ministerial duty is today an anomalous relic of bygone modes of thought . . . . There may have been utility in such procedural

First, the injunction which has been issued in no way restrains the assessment or collection of the taxes involved; it only forbids the government to make use of one method of collection, while leaving it free to use all of the other means at its disposal. Indeed, as the court below found, the government has regularly and successfully resorted to its power to levy on the assets of the employees here involved, to collect all of the money due it; that power is unaffected by the injunction which has been issued.

There is, thus, little relevance to such cases as *Bob Jones University* v. *Simon*, —— U.S. ——, 42 U.S.L.W. 4721, No. 72-1940 (May 15, 1974), or *Enochs* v. *Williams Packing & Nav. Co.*, 370 U.S. 1 (1962). Those cases, and the statute itself, plainly concern themselves with suits seeking injunctions against collection of the taxes by any means whatever, while the taxpayer litigates the question of whether they are due at all. The Congressional policy is that the taxes be collected, and the government have the revenue, while the propriety of the taxes is litigated in a suit for refund or otherwise.

As the court below noted, however, the employee plaintiffs here, Cleveland and Cadwallader, unlike the taxpayers in *Enochs* or in *Bob Jones*, cannot be remitted to the remedy of a refund suit, for they have no such remedy.

---

devices in days when the Government was not suable as freely as now. [Citations omitted.] They have little utility today . . . . In such circumstances [the Collector's] presence as a defendant is merely a remedial expedient for bringing the Government into court." To allow this "anomalous rule" to defeat the assertion of the free exercise of the plaintiffs' religion, is to permit a government of supposedly limited, constitutionally defined powers, to arrogate to itself any power it chooses, within the Constitution or without, by the simple expedient of refusing to allow its citizens the right to sue.

They do not contend that the government owes them any money, or that the taxes which have been collected from them by levy were not legally due. If the individual plaintiffs are denied the right to an action for an injunction, they are left entirely without a remedy to vindicate their right to the free exercise of their religion under the First Amendment. Compare *Commissioner* v. *"Americans United,"* —— U.S. ——, ——, 42 U.S.L.W. 4711, 4714, No. 72-1371 (May 15, 1974), finding §7421 applicable because "respondent will have a full opportunity to litigate the legality" of the taxes there in question, by means of a suit for refund.

Finally, this action involved not merely the injunction sought by the individual plaintiffs, but also the valid claim for a refund on behalf of AFSC.[13]

As this Court observed in *Bob Jones*, —— U.S. at ——, 42 U.S.L.W. at 4728, fn. 22, very different considerations apply in an action which seeks not an injunction alone, but a refund as well; such an action is not solely "for the purpose of restraining the assessment or collection of any tax," and thus "neither the literal terms nor the principal purpose of §7421(a) are applicable. Moreover, such a suit obviously does not clash with what the Court referred to in *Williams Packing, supra*, as a 'collateral objective of the Act—protection of the collector from litigation pending a

[13] The government appears to concede the validity of the refund claim, by its failure to appeal from this portion of the decision below (Jurisdictional Statement at p. 7, fn. 3). This failure to appeal, however, would appear also to be a concession that the court below was correct in holding that the AFSC had a right not to withhold the disputed portion of its employees' salaries, for if the position otherwise asserted by the government is correct, the sums remitted by the AFSC were properly due to the government, and any refund due is a refund to the employees of the tax monies collected by levy.

suit for a refund.' 370 U.S. at 7-8 . . . . [O]ur decision today . . . should not be interpreted as deciding whether injunctive relief is possible in a refund suit in a district court."

There was, thus, no bar to the jurisdiction of the court below to issue the injunction, and its decision should be affirmed.

CONCLUSION

For all of the reasons set forth above, the appeal should be dismissed or the decision below summarily affirmed.

Dated: August 22, 1974
New York, New York

Respectfully submitted,

MARVIN M. KARPATKIN
STEVEN DELIBERT
KARPATKIN, OHRENSTEIN & POLLET
1345 Avenue of the Americas
New York, New York 10019

ALAN REEVE HUNT
DUANE, MORRIS & HECKSCHER
100 South Broad Street
Philadelphia, Pa. 19110

Attorneys for Appellees•

• Attorneys for appellees gratefully acknowledge the research and other assistance of Mr. Bruce Fox, third-year student at Harvard Law School, and Ms. Karen Wagner, second-year student at N.Y.U. Law School, and express their appreciation to the summer internship program of the Law Students Civil Rights Research Council.

UNITED STATES *v.* AMERICAN FRIENDS SERVICE COMMITTEE ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 73-1791. Decided October 29, 1974

Appellee employees, conscientious objectors, pursuant to whose request appellee religious corporation, their employer, agreed to cease withholding under 26 U. S. C. § 3402 a portion of their wages deemed allocable to military expenditures, sought injunctive relief claiming that enforcement of § 3402 deprived them of their First Amendment rights to bear witness to their religious beliefs opposing war. The District Court entered judgment for the employees. *Held:* The Anti-Injunction Act, 26 U. S. C. § 7421 (a), which prohibits suits "for the purpose of restraining the assessment or collection of any tax," bars the relief granted to the employees, *Bob Jones University* v. *Simon*, 416 U. S. 725; *Commissioner* v. *"Americans United" Inc.*, 416 U. S. 752; and since the employees concededly cannot show that the Government would not prevail in a refund action, they do not qualify for a judicial exception to § 7421 (a) under the rules prescribed by *Enochs* v. *Williams Packing & Navigation Co.*, 370 U. S. 1.

368 F. Supp. 1176, reversed in part.

PER CURIAM.

Appellee American Friends Service Committee (employer) is a religious corporation, whose principal operation is philanthropic work and many of whose employees are conscientious objectors to war, performing alternate civilian service. Appellees Lorraine Cleveland and Leonard Cadwallader (employees) are present or past employees of the employer.

Because of their religious beliefs, employees in 1969 requested their employer to cease withholding 51.6% [1]

[1] This figure represents their estimate of the percentage of the federal budget which is military related.

of the portion of their wages required to be withheld under § 3402 of the Internal Revenue Code.[2] Although they conceded that these amounts were legally due to the Government, they wished to bear witness to their beliefs by reporting the amounts as taxes owed on their annual income tax returns but refusing to pay such amounts. They would thus compel the Government to levy in order to collect the taxes.

In response to the employees' request, the employer ceased withholding from the employees' salaries 51.6% of that amount required to be withheld under § 3402, although it continued to pay the full amount required to be withheld under that provision to the Government. It then brought a suit for refund of the amount it had paid to the Government but not actually withheld from salaries. The appellee employees joined the employer's action, seeking on their own behalf an injunction barring the United States' enforcement of § 3402 against the employer with regard to 51.6% of the required withholding. They argued that, even though they were liable for these amounts, § 3402 as applied to this portion of their wages was unconstitutional as a deprivation of their right to free exercise of religion under the First Amendment since it did not allow them to bear witness to their beliefs by refusing to voluntarily pay a portion of their taxes.

The District Court ordered a refund of amounts tendered by the employer but not withheld by it, since the Government had also levied on the employees for these taxes and hence had received a double payment of the

---

[2] 26 U. S. C. § 3402. The provision provides in part that "[e]very employer making payment of wages shall deduct and withhold upon such wages (except as otherwise provided in this section) a tax determined in accordance with the following tables. . . ." There is no dispute as to the applicability of the provision to the employees' wages.

amount due. The Government does not contest this portion of the District Court's judgment.[3]

The District Court also enjoined the United States from enforcing § 3402 against the employer with respect to 51.6% of the required withholding from employees' salaries, holding that § 3402 as applied to this amount constituted an unconstitutional abridgment of the right to free exercise of religion. The United States appeals this portion of the judgment.[4] The District Court's opinion and order were entered before this Court handed down its opinions in *Bob Jones University* v. *Simon*, 416 U. S. 725 (1974), and *Commissioner* v. *"Americans United" Inc.*, 416 U. S. 752 (1974).

The Anti-Injunction Act, 26 U. S. C. § 7421 (a), provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed. . . ."[5] In *Bob Jones, supra*, we rejected an appeal to create judicial exceptions to § 7421 (a) other than that carved out in *Enochs* v. *Williams Packing & Navigation Co., Inc.*, 370 U. S. 1 (1962). We noted that *Williams Packing* was

---

[3] Jurisdictional Statement 7 n. 3. We express no opinion as to the merits of the refund claim. The lower court's opinion is reported at 368 F. Supp. 1176.

[4] Since the District Court held that § 3402 was unconstitutional as applied to the facts of this case, this Court has jurisdiction over the appeal under 28 U. S. C. § 1252. *Fleming* v. *Rhodes*, 331 U. S. 100, 102–103 (1947); *United States* v. *Christian Echoes Ministry*, 404 U. S. 561, 563 (1972).

[5] See Act of Mar. 2, 1867, § 10, 14 Stat. 475; Rev. Stat. § 3224; Int. Rev. Code of 1939 § 3653. Section 7421 (a) of the Code states: "Except as provided in sections 6212 (a) and (c), 6213 (a), and 7426 (a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

the "capstone" of judicial construction of the Act and spelled an end to cyclical departures from the Act's plain meaning. *Bob Jones University* v. *Simon, supra,* at 742. In *"Americans United" Inc., supra,* we stated that a pre-enforcement injunction against the assessment or collection of taxes could be granted only if it were clear that the Government could in no circumstances ultimately prevail on the merits, and that equity jurisdiction existed. "Unless both conditions are met, a suit for preventive injunctive relief must be dismissed." *Commissioner* v. *"Americans United" Inc., supra,* at 758.

The employees concede, and the District Court found, that § 3402 withholding is a method of collection of taxes within the meaning of § 7421 (a).[6] They further concede, as they must, that they are not within the *Williams Packing* exception; far from the Government's defense in a refund suit being meritless, employees concede that the Goverment would undoubtedly prevail in such a refund action.

They contend, however, that since the District Court enjoined only one method of collection, and the Government is still free to assess and levy their taxes when due, the Act does not apply. But this contention ignores the plain wording of the Act which proscribes any "suit for the purpose of restraining the assessment or collection of any tax." The District Court's injunction against the collection of the tax by withholding enjoins the collection of the tax, and is therefore contrary to the express language of the Anti-Injunction Act.

[6] The legislative history of this provision enacted in 1943 indicates that its purpose in part was to assist the Government in securing needed revenue without having to resort to levy. H. R. Rep. No. 268, 78th Cong., 1st Sess., 1–2 (1943); S. Rep. No. 221, 78th Cong., 1st Sess., 1 (1943). The District Court noted that relegating the Government to levying after returns were filed would be an inefficient process. 368 F. Supp., at 1180.

Employees also argue that the Anti-Injunction Act is inapplicable because they have no alternate legal remedy available. They contend that a refund suit would be an inadequate remedy, in view of the concession on their part that the taxes are due, since they would surely lose such an action. But this ignores the fact that inadequacy of available remedies goes only to the existence of irreparable injury, an essential prerequisite for traditional equity jurisdiction, but only one of the *two* parts of the *Williams Packing* test. *Commissioner* v. *"Americans United" Inc., supra,* at 762; *Bob Jones University* v. *Simon, supra,* at 745. Here as in *"Americans United" Inc., supra,* employees will have a "full opportunity to litigate" their tax liability in a refund suit. 416 U. S., at 762. Even though the remitting of the employees to a refund action may frustrate their chosen method of bearing witness to their religious convictions, a chosen method which they insist is constitutionally protected, the bar of the Anti-Injunction Act is not removed:

> "[D]ecisions of this Court make it unmistakably clear that the constitutional nature of a taxpayer's claim, as distinct from its probability of success, is of no consequence under the Anti-Injunction Act." *Id.*, at 759.

See also *Lockerty* v. *Phillips*, 319 U. S. 182, 187 (1943).

In *Bob Jones* we left open the question of whether injunctive relief as to future collection would be proper as a form of ancillary relief in a refund suit where the taxpayer prevailed on the merits, in order to avoid the necessity of continuous subsequent "backward-looking refund suits." 416 U. S., at 748 n. 22. That situation is not presented here since the employees have never brought a refund action, much less prevailed on the merits of such an action. Their joinder in the employer's successful refund action, based on the receipt of double payment by

the Government, would afford no basis for injunctive relief based on their constitutional claim. The injunctive relief granted by the District Court in this case is plainly at odds with the dual objectives of the Act: efficient and expeditious collection of taxes with "a minimum of pre-enforcement judicial interference," and protection of the collector from litigation pending a refund suit. *Bob Jones, supra*, at 736–737.[7]

The judgment of the District Court is reversed insofar as it enjoins the collection of taxes by the Government and the withholding of wages by the employer.

Reversed in part.

MR. JUSTICE DOUGLAS, dissenting.

The sole question on the merits is whether the provision of the Internal Revenue Code, 26 U. S. C. § 3402, which requires employers to deduct and withhold from wages federal income taxes, is constitutional as applied to appellees, who on religious grounds object to the withholding taxes on their salaries which represent that portion of the federal budget allocated to military expenditures.[1] They invoke the Free Exercise Clause of the First Amendment, as they are Quakers who are opposed to participation in war in any form and who claim that this method of collection directly forecloses their ability freely to

[7] Because we have concluded that the Anti-Injunction Act bars injunctive relief, we have not found it necessary to decide other threshold issues such as whether a three-judge District Court was required, whether the sovereign immunity of the United States barred the suit, and whether the requirements of 28 U. S. C. § 1331 were met.

[1] The District Court found that 51.6% was a reasonable estimate of the proportion of the federal budget expended for military and war purposes based on the appropriations made by Congress in the calendar year 1968, according to a computation by the Friends Committee on National Legislation.

express that opposition, *i. e.*, to bear witness to their religious scruples.

There is no evidence that questions the sincerity of appellees' religious beliefs. Nor is there any issue raised as to whether that religious belief would give appellees a defense against ultimate payment of the tax. The District Court held that the withholding was unconstitutional as to appellees, 368 F. Supp. 1176, a conclusion with which I agree.

The withholding process[2] forecloses appellees from bearing witness against the use of these monthly deductions for military purposes. Under the opinion of this Court, they are deprived of bearing witness to their opposition to war—these withheld portions of their salaries pay the entire tax and they therefore have "no alternative legal remedy," a circumstance which distinguishes both *Enochs* v. *Williams Packing Co.*, 370 U. S. 1, and *Bob Jones University* v. *Simon*, 416 U. S. 725.

Quakers with true religious scruples against participating in war may no more be barred from protesting the payment of taxes to support war than they can be forcibly inducted into the Armed Forces and required to carry a

[2] Objections to withholding are not restricted to Quakers. Some federal judges have passionately opposed the withholding of taxes on their salaries, not on the basis that the tax is unconstitutional as was once held (see *O'Malley* v. *Woodrough*, 307 U. S. 277, overruling *Miles* v. *Graham*, 268 U. S. 501), but rather on the ground that the loss of the use of the sums deducted during the year preceding the April 15 due date is a diminution of their compensation against the command of Art. III, § 1, which provides in part: "The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office." Whatever may be the merits of that contention, the command of the First Amendment permits of no exceptions, for it states: "Congress shall make no law . . . prohibiting the free exercise" of religion.

gun, and yet be denied all opportunity to state their religious views against participation. See *United States* v. *Seeger*, 380 U. S. 163. The Court misses the entire point of the present controversy. Appellees are barred from protesting these monthly deductions under the Court's opinion. In *Enochs* v. *Williams Packing Co.*, *supra*, and *Bob Jones University* v. *Simon*, *supra*, taxpayers sought to enjoin the collection of taxes by any means whatever, while the taxpayers litigated the question whether the taxes were due at all. Here appellees challenge the withholding law as depriving them of their one and only chance of contesting the constitutionality of the withholding of the tax as applied to them. So unlike *Enochs* and *Bob Jones University* there is no remedy by way of refund.[3]

The religious belief which the Government violates here is that appellees must bear active witness to their objections to their support of war efforts. Dr. Edwin Bronner, who qualified as an expert on the history of

[3] In *Bob Jones University*, the Court expressly stated: "This is not a case in which an aggrieved party has no access at all to judicial review. Were that true, our conclusion might well be different." 416 U. S., at 746. Similarly, in *Commissioner* v. *"Americans United" Inc.*, 416 U. S. 752, the Court examined at length the claim that the respondent there had "no alternative legal remedy," ultimately concluding that the claim was untrue since a refund action for FUTA taxes, while slow and unsatisfactory from the taxpayer's point of view, would still provide a forum in which judicial review of the legality of the actions of the IRS could be obtained. *Id.*, at 761–762.

In the present case, since the taxpayers do not claim that they are entitled to a refund (conceding that the Government could legitimately collect the tax by *some* method), a refund suit would be summarily dismissed without ever reaching the merits of their claim that the particular method of collection violated their free exercise rights. This situation appears, then, to fall squarely within the question left open in *Bob Jones University*, *supra*; the Court now apparently resolves that question *sub silentio*.

Quakerism, gave testimony which, as summarized by the District Court, 368 F. Supp., at 1178, stated "that most Quakers have considered it an integral part of their faith [4] to bear witness to the beliefs which they hold. It has always been the prevailing view that simple preaching of one's beliefs is not sufficient, and that one's actions must accord with and give expression to one's beliefs. Many of the employees of the AFSC, including particularly appellees' Cleveland and Cadwallader, share this belief, and for these employees, the operation of the withholding tax, which leaves them no option as to the payment of the taxes which they conscientiously question, operates as a direct abridgment of the expression and implementation of deeply cherished religious beliefs."

If we are faithful to the command of the First Amendment, we would honor that religious belief. I have not bowed to the view of the majority that "some compelling state interest" will warrant an infringement of the Free Exercise Clause. *Sherbert* v. *Verner*, 374 U. S. 398, 406–407; *Braunfeld* v. *Brown*, 366 U. S. 599, 603. I have previously dissented from that position and opposed amending by judicial construction the plain command of the Free Exercise Clause. See *Sherbert* v. *Verner*, *supra*, at 410–413; *McGowan* v. *Maryland*, 366 U. S. 420, 575–576; *Arlan's Department Store* v. *Kentucky*, 371 U. S. 218.

The Anti-Injunction Act, 26 U. S. C. § 7421 (a), is no barrier. No "assessment or collection of any tax" is restrained, only one method of collection is barred, the

---

[4] "Friends will ever be concerned to relate their religious insights to the realities of international life. Opportunities for courageous action and for the expression of invincible good will remain under any political system. Whatever the system and whatever the situation that calls for decision, Friends are called upon to make their witness." Faith and Practice, the Book of Discipline of the New York Yearly Meeting of the Religious Society of Friends 42 (1968).

Government being left free to use all other means at its disposal. Moreover, to construe the Act as the Court construes it does not avoid a constitutional question but directly raises one. The Act, read as literally as the Court reads it, plainly violates the First Amendment as applied to the facts of this case, for "no law" prohibiting the free exercise of religion includes every kind of law, including a law staying the hand of a judge who enjoins a law for the collection of taxes that trespasses on the First Amendment.

The power of Congress to ordain and establish inferior courts (*Lockerty* v. *Phillips*, 319 U. S. 182, 187) has not to this date been assumed or held to mean that Congress could require a federal court to take action in violation of the Constitution. Thus suspension of the writ of habeas corpus is restricted to "Cases of Rebellion or Invasion" where "the public Safety may require it." Art. I, § 9, cl. 2. And when it comes to the First Amendment and the free exercise of religion, the mandate is that "Congress shall make no law . . . prohibiting" it. The Anti-Injunction Act is a "law"; and the Constitution gives no such preference to tax laws as to permit them to override religious scruples. May Congress enact a law that prohibits a minister from preaching if his taxes are in arrears? Or that disallows the making of a protest to a tax assessment even though the assessment and payment violate one's religious scruples? Until today, I would have thought not. The First Amendment, as applied to the States by the Fourteenth, bars a tax on the conduct of a religious exercise by a minority even though that religious exercise is obnoxious to the majority. *Murdock* v. *Pennsylvania*, 319 U. S. 105. Dicta to the effect that an allegation of unconstitutionality is irrelevant under the Anti-Injunction Act (*Bailey* v. *George*, 259 U. S. 16, 20)—which the Court today elevates to a holding—were based on the premise that there

was an alternative remedy to the unconstitutional actions. Here, as demonstrated, there is no other remedy. A refund suit is of no value, since the religious scruples which these taxpayers invoke relate to their inability to protest the payment, not to the use of the taxes themselves for military purposes.

I would affirm the judgment below.